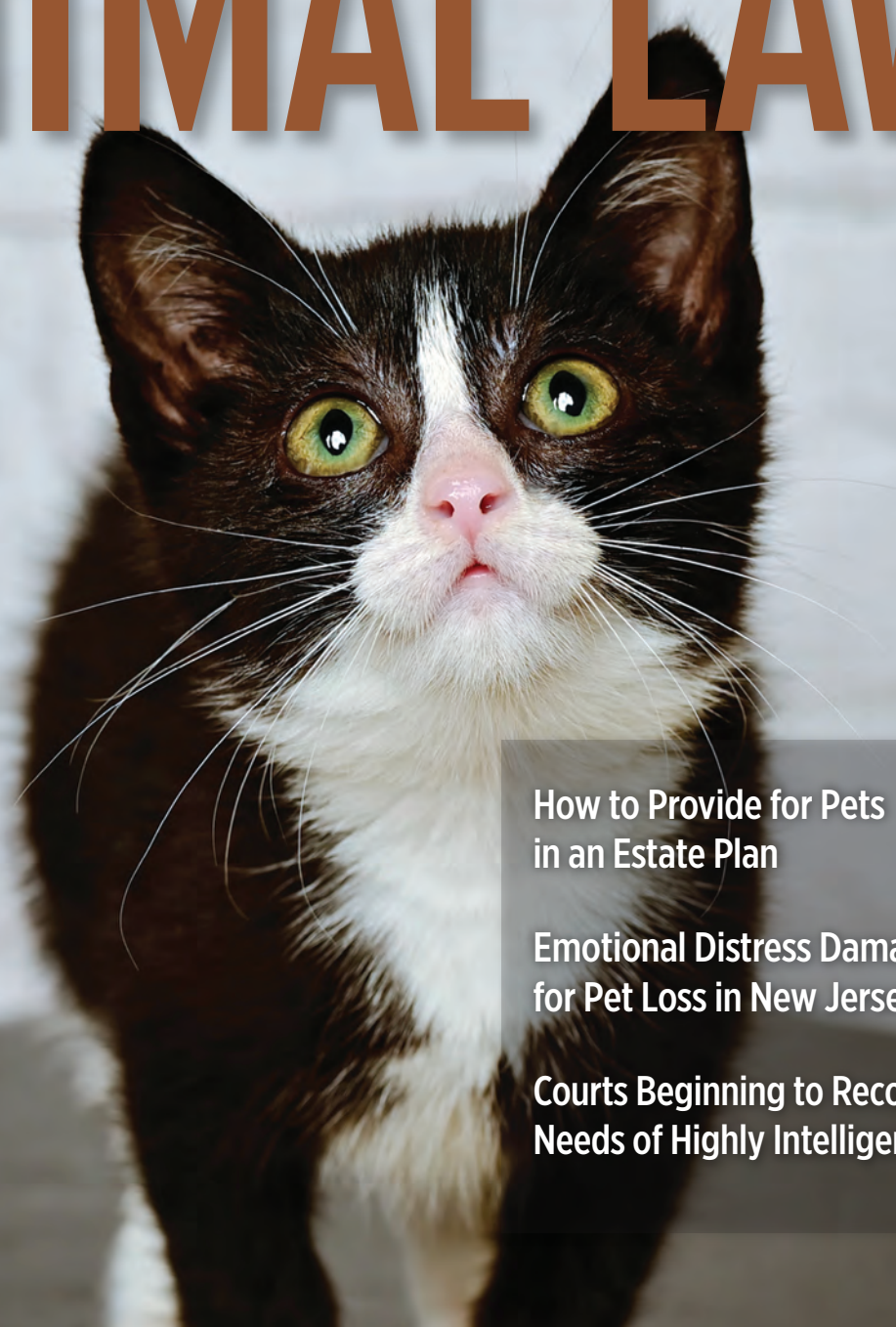


# NEW JERSEY LAWYER

October 2023

No. 344

## ANIMAL LAW



How to Provide for Pets  
in an Estate Plan

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Emotional Distress Damages  
for Pet Loss in New Jersey

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Courts Beginning to Recognize  
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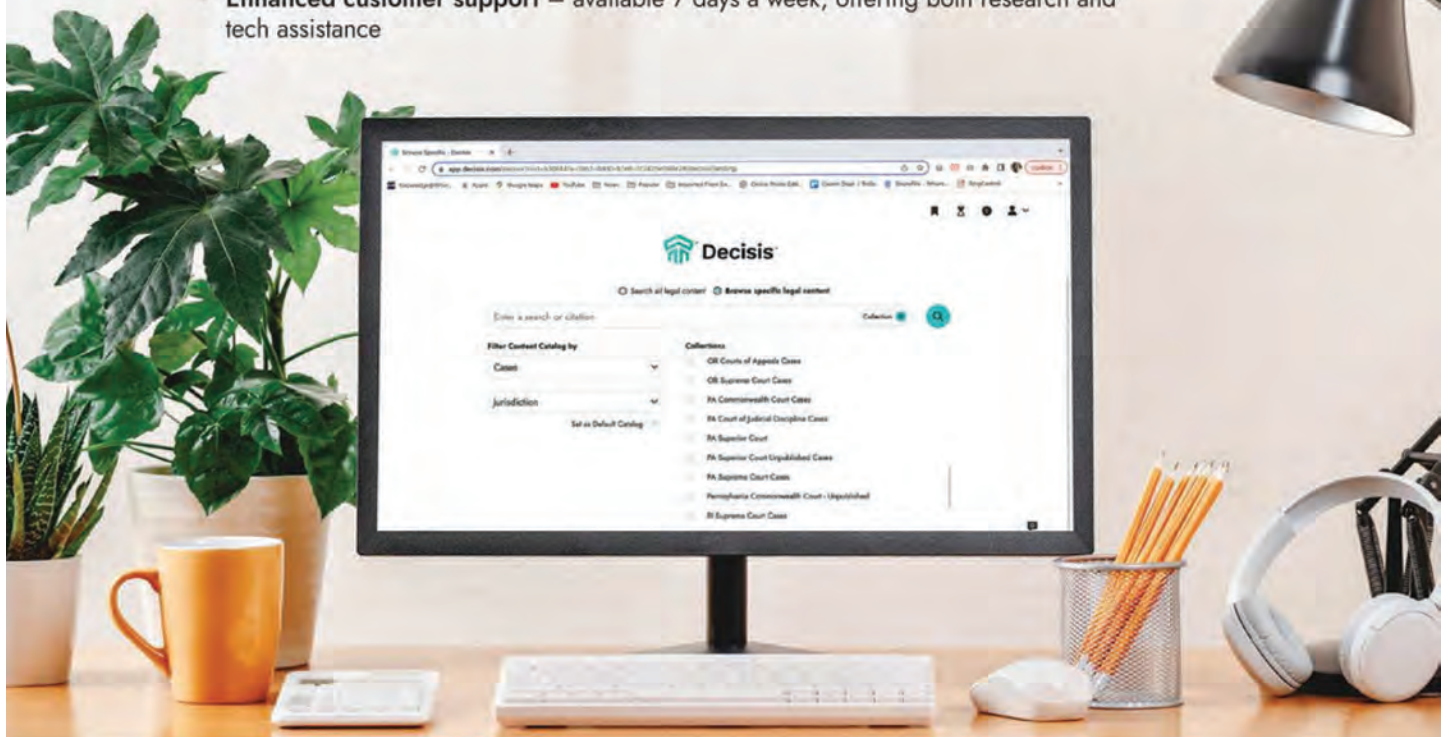


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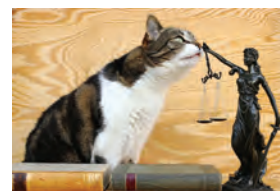
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# PRESIDENT'S PERSPECTIVE

TIMOTHY F. MCGOUGHAN

## For Attorneys, AI is the Next Big Turning Point in the Law



**I**n my 37 years as a practicing attorney, only a handful of times have I witnessed an event that reshaped the practice of law.

Of course, the computer and internet boom of the '80s and '90s transformed what was a paper-based profession into the digital world we practice in today. Contracts, settlement agreements and demand letters that used to travel back and forth over weeks through the postal service could now be circulated within minutes by email. Rather than pouring through books of case law to craft an argument, legal research is now done by punching in words into a search engine.

Three years ago, the legal world underwent a seismic shift that saw much of our work move from the courtroom to the computer screen. With trials and hearings of all sorts put on hold due to the pandemic, the advent of virtual proceedings has allowed some flexibility in our schedules and better work-life balance.

I believe we are on the precipice of another breakthrough. The rapid rise, ease of accessibility and widespread use of artificial intelligence will have a significant and lasting effect on the practice of law. ChatGPT, a popular AI program that launched less than a year ago, has already passed the bar exam. Attorneys can have it mimic an adversary ahead of trial. Companies like LexisNexis have embraced the technology and offer programs for attorneys to have interactive conversations with a database.

The technology is swiftly evolving and the NJSBA believes it is critical to study the impact it may have on our profession. The NJSBA's Board of Trustees took action in September to create the Task Force on Artificial Intelligence in the Law. The primary focus of this task force, comprised of attorneys, non-attorneys and representatives from the courts, is to review the complex legal and ethical questions raised by this technology

and make recommendations for best practices when used by New Jersey attorneys.

The task force will also examine the technology's potential downsides, including situations where it is unsafe or inappropriate to use AI—such as the inadvertent waiver of attorney-client and attorney work product privileges, and the use of AI in lieu of humans in the legal industry.

If deemed valuable by the task force, the Association will consider establishing a permanent group within the NJSBA that monitors the emerging technology and supports its evolution in ways that are beneficial to the legal sector. The NJSBA may also explore the development of an AI information hub on the Association's website—where NJSBA members could access important information as needed—along with an educational curriculum for New Jersey attorneys.

The state Supreme Court has also taken notice of this rising development and formed a committee to review the legal and ethical issues AI presents in the court context. The committee, on which I am excited to serve as a representative from the NJSBA, plans to develop recommendations for judges, attorneys, court staff and policymakers on the appropriate use and limitations of AI. This may include mandatory disclosures on the use of AI in court submissions and testimony, along with updates to court forms, model orders and jury instructions.

For attorneys who want a crash course in AI or more advanced strategies to improve their practice, the NJSBA will offer a slate of programming this fall and through the winter. A free webinar on Oct. 3 will provide an introduction on what lawyers should know about AI and ChatGPT's potential to transform legal practice by offering general legal advice, as well as legal research, contract drafting and document review. On Oct. 23, attorneys can earn CLE credits through a program on the idea of employers using AI to make important employment decisions.

I encourage those keen on this exciting new space to register and keep up with the NJSBA and NJICLE's updates on the issue. ■



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# FROM THE SPECIAL EDITORS

## A Look at the Dynamic Nature of Animal Law

By Albertina Webb and Michael F. Schaff

Animals and humans have had an intertwining and symbiotic relationship since time immemorial. In the field of animal law, passions can run high no matter what interest is being represented.

It is exactly because of those deep connections that we present an edition of articles focused on various issues in the field of animal law. Please note that while there are many advocates in the field, these articles are presented as information to help NJSBA members learn about issues that they may confront in their lives or practice. To the degree that opinions are expressed, unless it is indicated, they are the authors' alone and do not represent an official position of the Association.

This edition has been in the pipeline for a long time. You will see that many of the authors are members from the NJSBA's Animal Welfare Special Committee. That is a group of very active and passionate professionals. The committee's mission is to provide a forum for members to exchange ideas, study and understand laws, regulations and case law pertaining to all areas of animal law; monitor legislation relating to animals; publish informational brochures on legal issues pertaining to animals; hold seminars and lectures on various animal law issues; address all issues concerning the intersection of animals and the law; provide a forum for and promote the advancement of the legal protections of animals and associated humane considerations; and create a paradigm shift resulting in a just world for all.

Reflecting the dynamic nature of the field of animal law, the NJSBA Board of Trustees recently created



**ALBERTINA WEBB** is a partner at Hill Wal-lack, LLP in the family law department, primarily in the firm's Red Bank and Princeton offices. She is the president of the Hispanic Bar Association of New Jersey, co-chair of the NJSBA Diversity Committee and several other great committees too numerous to name.



**MICHAEL F. SCHAFF** is a shareholder in Wilentz, Goldman & Spitzer, P.A., where he co-chairs the Corporate, Healthcare and Cannabis Law Departments. Michael is a past Trustee of the NJSBA, past Chair of the New Jersey Lawyer Editorial Board, past Chair of the NJSBA Health Law Section and past co-chair of the NJSBA Cannabis Law Special Committee.

a second animal-related committee, the Animal Health, Welfare, Agriculture and Veterinary Practice Special Committee. Its charge is to provide a forum for members to exchange ideas, study and understand laws, regulations and case law pertaining to the protection of the rights of animal owners, including agricultural animals, to continue to own animals and protect their health and welfare, the defense of veterinarians accused of malpractice; to monitor legislation relating to animal health, animal welfare and veterinary practice; publish informational brochures on legal issues pertaining to animal ownership; and hold seminars and lectures on such issues. Inside, you will also find authors of articles from this committee.

The edition includes articles on:

- Animal Law 101: The Consequences of Enhanced Animal Protective Laws by Nancy Halpern;
- *Houseman* and Beyond: Litigating Disputes Over Companion Animals by Gina Calogero;
- Domestic Violence and Pets: Why Does the Dog Matter to Your Family Practice? by Michelle Newton;
- The Dog Ate My Kids' Inheritance: Providing for Pets in an Estate Plan by G. Warren Whitaker;
- Paw Prints on our Hearts: Emotional Distress Damages for Pet Loss in New Jersey by Emerald E. Sheay;
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- Courts Beginning to Recognize Needs of Highly Intelligent Species by Julian F. Gorelli; and
- "Cocaine Hippios" and the Quest for Legal Personhood by Thomas A. Leach and Doris Lin.

This special edition could not have been completed without the invaluable assistance and leadership from Nicholas Lombardi, who worked this summer at Wilentz Goldman & Spitzer. He was instrumental in assisting with the review of every article, checking for spelling and grammatical errors and making sure all the periods and commas were in the right place. It was a Herculean task, but he never complained and was great on following up and providing courteous correspondence in every email.

There is a lot to be learned in this edition. We hope you enjoy it, as much as our members enjoyed writing the articles. ■




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## ETHICS AND PROFESSIONAL RESPONSIBILITY

### Is Permanent Disbarment Gaining Some ‘Gray’?

By Bonnie Frost

*Einhorn Barbarito*

Once a black-and-white determination, permanent disbarment may be headed for some gray. Serious rethinking of how to apply the penalty began in June 2022, when the New Jersey Supreme Court appointed a committee to report on whether New Jersey should maintain the rule that disbarment, once ordered, is permanent. That committee has recommended that it should not and that, instead, disbarred attorneys should be able to apply for readmission after five years. The Court has yet to make a final determination.

New Jersey is one of nine states where disbarment is permanent, and the subject has been frequently discussed in legal circles over the past two years. For instance, in *In re Lucid*, 248 N.J. 514 (2021) and *In re Wade*, 250 N.J. 581 (2022), the State Bar advocated for a clarification that automatic permanent disbarment should apply only in situations where there is clear and convincing evidence of actual intent to steal from or defraud a client. Absent such evidence, the NJSBA advocated that the facts and circumstances of the particular situation should be weighed and consideration given to alternative appropriate sanctions short of permanent disbarment. When the Court appointed its committee to examine the issue, the State Bar wholeheartedly endorsed the undertaking. And when it issued its final recommendation for potential readmission after five years, the State Bar urged the Court to adopt it.

To say that facts are everything in a discipline case is an understatement. In these two cases, the facts drove the ultimate discipline. In *Lucid*, the Court censured an attorney who misused trust account funds once. In *Wade*, the Court disbarred an attorney who misused trust account funds over 15 years.

Also, in *Lucid*, the attorney disbursed trust money to pay a client debt because of a looming deadline for payment of a judgment. The case settled on Jan. 21; the client told her he would send her the money for his debt; a blizzard ensued; and, on Jan. 26, the creditor sent a letter advising the deal was off unless he had the money by a date certain. The lawyer wrote the check from her trust account without having first received the client's check. She argued that she was not borrowing money from one



client to pay another client and that she had no intent to take any client's money, and wanted to pay her client's obligation on time. The attorney argued there was no self-dealing and the sole issue was the postal service's lack of timely delivery of the check. She claimed that the disbursement was a "premature disbursement" against uncollected funds, representing a "momentary lapse in appreciating that she should have delayed sending a check until she had the funds in hand from her client," and she argued that it was a negligent misappropriation of trust account funds, citing *In re Ambrosio*, 200 N.J. 434 (2009).

After the Office of Attorney Ethics (OAE) notified *Lucid* that she had a \$389 overdraft in her trust account, she took immediate measures to replenish her trust account, educated herself on recordkeeping requirements, corrected all record keeping deficiencies and retained a bookkeeper. In the process of reconstructing her records, she realized she had advanced an unrelated client's trust funds to pay another client's debt. The attorney immediately reported herself to the OAE. A majority of the Disciplinary Review Board (DRB) found she faced disbarment, but because of her honesty and integrity, she posed no danger to the public. They found that she was far from unsalvageable. Nonetheless, the DRB recommended disbarment based on the language from *In re Noonan*, 102 N.J. 157 (1986), and *In re Wilson*, 81 N.J. 451 (1979).

Four members wrote a dissent, noting that she showed no premeditation or corrupt intent; her conduct was solely to pro-

tect a client; she believed the funds would arrive; the risk to other client's funds was theoretical and brief; there was no harm to any client; this was a single isolated incident; and, "most importantly," she self-reported the incident to the OAE. They believed that disbarment would be "too harsh a sanction" for a "fleeting, isolated oversight." The Court agreed with the dissent. The attorney was censured.

In *Wilson*, the New Jersey Supreme Court stated that "[g]enerally, all [knowing misappropriation cases] shall result in disbarment. We foresee no significant exception to this rule and expect the result to be almost invariable." 81 N.J. at 453. "Mitigating factors will rarely override the requirement of disbarment." *Id.* at 461. In the case of *In re Hollendonner*, 102 N.J. 21, (1985) the Court extended the holding in *Wilson* to include disbarment if a lawyer knowingly misappropriates escrow moneys as escrow moneys have a "near identity to trust funds."

The *Noonan* case clarified the *Wilson* rule, providing that "knowing is taking a client's money and knowing that client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it or whether in fact he ultimately did reimburse the client, not does it matter that the pressures on the lawyer to take the money were great or minimal...the presence of 'good character and fitness,' the absence of "dishonesty, venality or immorality" are all irrelevant." *Id.* at 159-60.

Coming on the heels of *Lucid*, in *In re Wade*, the attorney used her trust account as a credit line, believing this was excusable as long as she made the client whole. The attorney never borrowed more than \$12,000 from the trust account (which she always paid back) because she knew she could never pay back more. The attorney admitted to OAE that she borrowed money from her trust account and that she juggled funds between her personal, business and trust accounts, actions that belied her claimed lack of knowledge that her trust account was overdrawn. This practice continued for 15 years. The DRB and the New Jersey Supreme Court agreed that the attorney was a pillar of her community and that she had a stellar reputation among friends and other attorneys, noting that she worked out of her home and represented underprivileged clients in Paterson. No client complained about her using their money and no client was financially harmed by her actions. Nonetheless, because the attorney admitted that she used client money as a "line of credit" for her own purposes for 15 years, she was disbarred.

*Lucid* and *Wade* were decided by the DRB almost at the same point in time with recommendations for disbarment. They presented startlingly different facts and sympathetic respondents, which led the Court to agree with *amicus* that the time was ripe to reconsider permanent disbarment.

## TECHNOLOGY

### Microsoft Word's Top 7 Most Underutilized Features

By PracticeHQ



Microsoft Word is a powerful word processor, but much of its power isn't apparent on the surface. You can use Word for decades without realizing how to take advantage of everything it offers. Take advantage of these seven most underutilized features to get more out of Word every day.

#### 1. Status Bar

The Status Bar sits at the bottom of the Word window, displaying information like the word count and zoom level. While the default information shown is sometimes helpful, you can customize it to meet your needs. Right-click on the status bar to pull up a list of options.

Some recommend adding Section (to see which section of the document you're working in), Track Changes (turn them on/off with a single click and see if they are on at any given moment), and Caps Lock (it'll give you an alert when caps lock is engaged).

#### 2. Quick Access Toolbar

The Quick Access Toolbar gives you one-click access to your favorite features, including those not available on the ribbon. Before customizing the toolbar, ensure that you can see it (newer versions of Word hide it by default). Right-click on the ribbon. If you see an option to show the Quick Access Toolbar, click on it.

You can add commands to the Quick Access Toolbar from Word's options or by right-clicking on any feature in the ribbon and selecting Add to Quick Access Toolbar. Some recommend adding features that take a few clicks to access or features that are located on ribbons other than the Home ribbon.

#### 3. Dictate

If your computer has a microphone (most laptops do), you can dictate directly in Word and let the software transcribe the dictation for you. Get started by clicking on the Dictate button on the Home ribbon. Once dictation loads, it'll automatically start transcribing what you say. Click on the microphone to pause/resume dictation. Use the gear to enable/disable auto-punctuation or change languages.

#### 4. AutoText

AutoText allows you to drop commonly used pre-formatted text into documents quickly. Instead of opening an existing document to copy and paste out of, you can use AutoText to save



clicks and reduce the likelihood of error.

Start by typing and formatting the commonly used text. Select the text. Then on the Insert ribbon, click on Quick Parts. In the Quick Parts dropdown, hover over AutoText, and select Save Selection to AutoText Gallery. Give it a name and click OK.

To insert the text, either type the first four letters of the name and hit enter or pull it up from the AutoText list. Going back to the Insert ribbon, clicking on Quick Parts, and hovering over AutoText gets old fast. Consider adding the AutoText gallery to your Quick Access Toolbar.

## 5. AutoCorrect

AutoCorrect automatically changes the text you type as you type. Ever type a statutory reference that includes a “(c)” only to have Word change it to a ©? That’s an AutoCorrect entry at work. You can get rid of AutoCorrect entries you don’t like and set up custom entries to meet your need.

To get to the AutoCorrect list, select Options from the File menu. Click on Proofing on the left-hand side, then click on the AutoCorrect Options... button. Under “Replace text as you type,” select any items you don’t like and click on the Delete button. Type your own entries and click on the Add button to add them to the list.

AutoCorrect entries are helpful for short snippets of text like names or common typographical errors.

## 6. Default Formatting

If you’ve ever had the wrong font randomly pop up in a document, you’re not alone. All too often, the default font for a document doesn’t match the font actually used in it. To stop the wrong font from randomly popping up, open your font formatting dialog, select the desired font, and click on the Set as Default button. Apply the default to the current document, and the previous default font will stop randomly showing up.

## 7. Styles

Styles are Word’s most powerful formatting feature. They allow you to format text quickly, ensure formatting consistency across your documents, and make changing formatting a breeze. The key is understanding how to modify styles to meet your needs.

Start by applying the formatting you want to a paragraph in your document. Select the text. Then, right-click on the style name in the Styles gallery (found on the Home ribbon). Select Update <style name> to Match Selection.

Once modified, you can apply the style’s formatting by selecting the text to be formatted and then clicking on the style in the Styles gallery. If you modify the style later, all of the text formatted with that style will update to the new formatting.

*The New Jersey State Bar Association’s Practice HQ is a free member resource designed to help members build and maintain a successful, thriving legal practice. Learn more at [njsba.com/practice-hq](http://njsba.com/practice-hq).*

## PRACTICE PERFECT

### Have You Considered Adding a Paralegal to Your Team?

By Kimberly Molinelli

*NJSBA Paralegal Special Committee*

*Blume, Forte, Fried, Zerres & Molinari, P.C. Paralegal*

Congratulations! You did it...you’ve opened your own practice. Maybe you are a solo, or maybe you have a partner or an associate. You’ve probably hired an administrative assistant to help with maintaining your hectic calendar and managing the influx of calls. You are almost ready to fight the good fight, but you still might be missing one important piece of the puzzle—have you considered hiring a paralegal?



You might be wondering, “what exactly does a paralegal do, and why do I need one on my team?” The benefits are many, but it is important to first understand what distinguishes a paralegal from other legal staff (who can be just as valuable). A paralegal can reduce your workload by doing some of the substantive legal work you would be doing. The NJSBA Bylaws define a paralegal as a person “who is qualified through education, training, or work experience, is employed or retained ... in a capacity or function which involves the performance, under the direction and supervision of a lawyer, of specifically delegated substantive legal work, which work, for the most part, requires sufficient knowledge of legal concepts that, **absent that paralegal or legal assistant, the lawyer would perform the task.**” (Article 1-2(d)). A paralegal can occupy their role through experience alone, provided they are capable of performing the “substantive legal work” that the attorney would otherwise do. There are several organizations,

such as the National Association of Legal Assistants and the National Federation of Paralegal Associations, which measure skill and knowledge through an exam (these paralegals are *certified*). The American Bar Association accredits educational programs at various two- and four-year colleges, where enrolled students complete required legal coursework (these paralegals are *certificated*). However, these entities and programs are completely voluntary, as New Jersey does not mandate any specific educational requirement to be a paralegal, nor does our state license paralegals or maintain a registry. It is therefore entirely up to you, as a hiring attorney, what combination of education and/or experience you require of a paralegal.

Once you've found your perfect paralegal, you are ready to reap the following benefits of your new addition to your dynamic legal team:

- **A Paralegal Can Keep Your Overhead Low.** Paralegals can perform many of the responsibilities that an attorney can do, at a lower cost to you. For example, a paralegal skilled in legal research and writing can surf through research tools and get a jump on writing your brief, for considerably less than what you would pay an associate. In addition, paralegals are not required to maintain a legal malpractice insurance, resulting in additional savings and increasing firm revenue.
- **Lower Legal Fees Means Happier Clients.** Should you choose to bill your paralegal's time, it would generally be at a significantly lower rate than that of a partner or associate. A client would appreciate the significant savings over an attorney's rate to compile the information needed to complete a case information statement in their dissolution action, or prepare the initial draft answers to interrogatories in their civil case, resulting in a happy client, which increases the chances of them being a repeat client, or referring their friends.
- **Paralegals Can Help You Multitask.** While your paralegal is working on research and starting a brief, or drafting pleadings or discovery demands, your and your associates' time is free to do things a paralegal cannot, such as attend depositions or appear in court. Stuck at a trial call all day? No problem. Your paralegal is back at the office working on projects, keeping you from falling behind on your other cases—as well as your hourly billing.
- **Avoid That Ethics Complaint!** According to the American Bar Association, one of the common reasons that clients file ethics complaints is because of an attorney's failure to adequately communicate. Fortunately, in addition to being knowledgeable, your paralegal is also always accessible. When you are out of the office, your paralegal is there to respond to clients who call for updates on the progress of their case. Litigation can be frightening to anxious clients, and they will appreciate having someone readily available to take their calls, answer

what are often basic questions, and alleviate their concerns. A client who feels satisfied receiving sufficient information in a timely manner is far less likely to make you the subject of an ethics complaint.

- **A Paralegal Will Not Steal a Client.** An attorney in your office can potentially poach a client. While you're busy on trial, your clients are calling, looking for information about their file. In your absence, these calls may get passed on to your colleagues who are now in a position to cultivate a relationship with your impatient client, and if they leave, there is a good chance the client will go with them. Because paralegals cannot practice law, you need not worry that they might defect from the firm with your client.

Paralegals can assume many of the responsibilities of an associate, keep you out of hot water with clients, and boost your firm's bottom line. Paralegals can help ensure that clients become repeat clients and manage your practice so that you can focus on more substantive matters. So remember, when you are setting up your practice and considering who you need in your corner, don't forget to include a paralegal on your squad of legal superheroes.

## WORKING WELL

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### The Equanimous Attorney

By Lori Ann Buza

NJSBA Lawyer Well-Being Committee Chair

KSBranigan Law

Are you an equanimous attorney? The word *equanimity* comes from the Latin word *aequanimis* meaning "even minded." It conveys mental calmness, composure, and evenness of temper, especially in difficult situations. Equanimity is the same type of calm yet strong centering mindset that martial artists access as their source of focus and power, and yogis, for balance and stability. Like these masters, equanimous litigators, negotiators and judges alike possess great powers of persuasion, command, grace, and poise. *We all know it when we see it...*the masterful lawyer.

It is the steady rhythm of the pulse of our body we may use as a guide for the way we should live life. As so much of our life is at work or doing work, that metaphor applies there as well. Lawyers are often faced with extraordinary stresses at work, and hence their need for equanimity is even greater. When the body is under heightened stress naturally the heart rate increases, but the measure of one's health is how quickly it returns to a resting heart rate. Similarly, when lawyers are faced with challenges and significant stress, they need to employ the skills necessary to quickly return to calm and clarity of thought.

Responses to outside stimuli, whether positive or negative,



need to be “even pulsed.” What’s the alternative? Extreme reactions to difficult situations, rigidity of thought, or a lack of reflection and composure. Because of our complex and stressful professions, attorneys may naturally tend toward heightened responses and drama. Though there can be a time and place for this, there’s no denying it depletes energy and challenges one’s ability to “working well” and most productively.

Equanimity can be deliberately cultivated over time. It is a state of being that should be practiced both at work and home. How to? Start with focused breathing training on a regular basis. Meditate and be mindful—consistently. Exercise in some form every day. Take breaks at work. Get proper rest and nutrition. And finally, practice STOP! When you feel an extreme response to stress coming on:

**S= stop what you are doing,**

**T= take a breath/time to calm,**

**O= observe what’s happening, and only then,**

**P= proceed with purpose.**

It is a lawyer’s choice to train themselves to equanimity practice. Learning to calibrate one’s responses, come to the center of one’s being, and use focus and even-temperedness brings about effective and efficient lawyering. Attorneys who have mastered this “steady pulse” in their practice of law preserve substantial energy and attention for other aspects of joy in their lives and hence overall well-being.

## WRITER’S CORNER

### Rhythm (or ‘Cadence’) in Writing Keeps Your Argument Engaging

By Judge Nelson Johnson (Ret.)

What does rhythm mean in writing? Rhythm, or cadence, is the pattern of stresses within a line of prose; it is the flow of



words within a literary work. The placement of words in relation to one another determines whether the rollout of your words is pleasing. This movement of language is primarily created through diction (i.e., your choice of words and syntax, and how you choose to arrange those words).

How does rhythm work? One way to define rhythm is “The measured flow of words and phrases in verse or prose as determined by the relation of long and short or stressed and unstressed syllables.” In writing, rhythm is defined by punctuation and the stress patterns of various words in a sentence, namely those words you wish to emphasize; long sentences may sound smoother and more elegant, while short sentences can make your content snappier. You must deploy both. When you permit each sentence, or paragraph, to follow the same structure and rhythm, your writing will quickly become boring. In short, you must mix things up to keep the reader’s eye moving across the page. Avoid two long sentences or paragraphs followed by another. Never permit three in a row. What is a “long” sentence? In this paragraph, the third sentence deploys 41 words to define rhythm. Ordinarily, that’s approaching the outer limits. What’s a short sentence? The sentence that follows the longest sentence in this paragraph is five words.

Here are three suggestions for enhancing your rhythm.

- 1. Alternate the length of your sentences.** Vary the word count for your sentences, sometimes by counting the number of words, but always naturally. On occasion, that may require adding words to the fragments of a long sentence that must be broken up. Don’t be afraid to use a well-contrived run-on sentence, followed by an artful short sentence of fewer than 10 words, much like snapping your fingers.
- 2. Reposition words and phrases.** “English is a flexible language. Exploit that fact. Though parts of speech have set interrelationships, the relative positions of words representing the categories are negotiable. Shift words and phrases around until the parts of a sentence seem to fall into their preordained places.”
- 3. Use sentence fragments.** Concerns over incomplete sentences died a long time ago. Most people frequently speak in incomplete sentences and fragments. You can too. Employed judiciously, sentence fragments can highlight issues and excite the rhythm of your writing.

Ditto, as to contractions. *Don’t, doesn’t, isn’t, won’t, can’t*, etc. are all acceptable when used sparingly, and placed prudently. All that said, your writing must consistently convey carefully constructed thoughts.

*Judge Nelson Johnson (Ret.), the former state Superior Court judge who penned the book that inspired the HBO series Boardwalk Empire, has a new book published by the NJSBA to help attorneys*

*write and argue better. His latest work, Style & Persuasion: A Handbook for Lawyers, lists the most common writing and arguing mistakes lawyers make and includes practical tips for improvement. This is an excerpt from the book, which can be purchased at [njsba.com](http://njsba.com).*

## DIVERSITY EQUITY AND INCLUSION

### Developing Empathy and Compassion to Avoid Division in the Workplace

Without empathy and compassion, the workplace would be an emotional battlefield where no one would feel safe to share their ideas or concerns, ask for what they need to improve their work or have a healthy work-life balance for fear of being fired.

Empathy and compassion are the cornerstones to creating a work environment that promotes healthy interaction, positive morale, and a sense of feeling valued. In fact, according to research conducted by McKee, David, Chaskalson, and Chussil, increased empathy impacts our work effectiveness, thereby improving our skills as workers and managers.

The general consensus among researchers is that empathy is the ability to sense another person's emotions, while also being able to imagine what someone else might be thinking or feeling. Empathy is the foundation of compassion, which is defined as the concern for the suffering or misfortune of others and a desire to alleviate that suffering.

In other words, empathy is identifying and sympathizing with what the other person may be experiencing and feeling, while compassion is the act of helping that hurting person either physically and/or emotionally.

Many corporations have been utilizing employee trainings with a focus on developing the five components of emotional intelligence: self-awareness, self-regulation, motivation, empathy, and social skills. The Oxford Dictionary defines emotional intelligence as: "The capacity to be aware of, control, and express one's emotions, and to handle interpersonal relationships judiciously and empathetically."

Although empathy is not an attribute that all people are born with, it is a skill that can be learned by using self-awareness and mindfulness to notice how our beliefs, attitudes, and behaviors affect those around us. Empathy is also gained through the process of reading non-verbal cues, such as facial expressions, tone of voice, and body language.

According to PositivePsychology.com, there are eight strategies to developing empathy:

1. Cultivate curiosity about the people you interact with who may come from different religious, ethnic, or political backgrounds.
2. Step outside your comfort zone and learn something new,



which can foster feelings of humility and lead to empathy.

3. Ask for feedback from others regarding your active listening and relationship skills, and identify areas that you can improve.
4. Examine how your biases impact your capacity to empathize when you make judgments about others who are different than you.
5. Spend time with others who you usually don't connect with and practice active listening to help you "walk in their shoes."
6. Practice having difficult but respectful conversations with those who have different points of view by listening without interruption and being open to new ideas.
7. Work on a shared cause with people different than you. Research has shown this can help to heal differences and remove biases.
8. Expand your reading and expose yourself to different viewpoints through various articles, books, and newspapers.

As we become more mindful of how we treat others, we can take responsibility for doing our part to create a more accepting and validating environment in the workplace. Developing the skill of empathy, which is a necessary step to compassion, is crucial to promoting the evolution of a supportive and thriving workplace atmosphere.

*This article is from the Charles Nechtem Associates (CNA) newsletter. Through CNA, the New Jersey State Bar Association's Member Assistance Program offers members access to an online wellness library with 25,000 interactive resources to help people resolve personal problems and improve their professional lives. The program also offers free mental health counseling services. Visit [njsba.com](http://njsba.com) for more information.*





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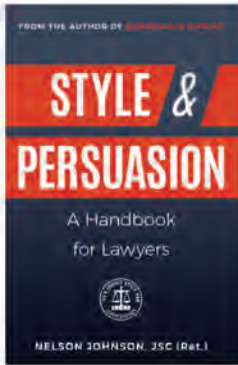
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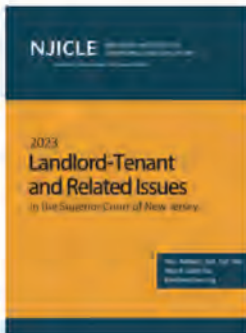
Written by: Nelson Johnson JSC (Ret.)

As an attorney, your success depends on your ability to communicate effectively, regardless of the subject or audience. Your goal must be simple, unadorned prose; writing that is lean, strong, and free of embellishment. None of that comes effortlessly, but armed with the right strategies, it is easily achievable. As an award-winning author, retired New Jersey Superior Court Judge Nelson Johnson enjoys sharing the "tricks of the writing trade" that are rarely discussed in college or law school - yet are highly effective.

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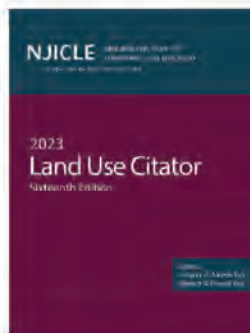
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# Animal Law 101

## The Consequences of Enhanced Animal Protective Laws

**By Nancy Halpern**

Animal law has existed since the dawn of legal theory and practice, but was not identified as a separate practice area until the 1970s. There is a fundamental difference between “Animal Law” and “Animal Rights Advocacy” or “Animal Rights Law.” This article introduces these two approaches to the legal space involving animals, provides attorneys with a background of the legal issues involved, and how the intended consequences of enhancing animal rights affect the practice of law in New Jersey.



## 'Animal Law' or 'Animal Rights Law'

There are conflicting viewpoints about what Animal Law is, and before discussing any legal topic, an understanding of the relevant terms is a condition precedent. The lack of agreement about the definition of "Animal Law" creates a stumbling block right out of the gate. On the one hand, "Animal Law" is considered an area of law "that deals with or pertains to animals."<sup>1</sup> On the other hand, "Animal Law" is better labeled "Animal Rights Law" which is considered "the use of the law to advocate for the rights or interests of animals, and against traditional uses of animals and legal principles that (allegedly) harm and oppress animals."<sup>2</sup> To provide a reasonable method to discuss the non-synonymous terms, we distinguish the first as, "Animal Law"—the variety of laws that impact animals, and the other, as "Animal Rights Law"—the intent to advocate for a change in the legal status of animals.

Animal Rights Law is

a large-scale, organized movement, which started in the early 1970's in the United States, spearheaded by attorneys and law students with the express purpose of filing lawsuits to protect animals and establishing the concept of their legal rights, regardless of the species of the animals or the ownership interest of humans. What we now call Animal Rights Law or Animal Law began when attorneys consciously considered animal-related legal issues from the perspective of the animal's interests, when they began to view the animal

as the de facto client, and where the goal was to challenge institutionalized forms of animal abuse and exploitation.<sup>3</sup>

"Animal rights theory further argues that animals have an inherent moral right to have these interests respected by humans.... Because these theorists call for ending the use of animals to benefit humans or animals, they are characterized (and characterize themselves) as animal use 'abolitionists.'"<sup>4</sup> Abolitionists describe "a morally just world...[as one with] no pets, no aquaria, no zoos. No field of sheep, no barns of cows. That's true animal rights."<sup>5</sup>

## Scope and Breadth of Animal Law

Animal Law is not new. And despite repeated arguments that animals, and particularly pets are treated as mere property, perhaps the most riveting evidence of the long-standing view of the importance of the companion animal bond was demonstrated in "Eulogy for a dog" as argued in summation in *Burden v. Hornsby* in 1870, which resulted in a penalty against the person who intentionally shot and killed a neighbor's dog,

A man's dog stands by him in prosperity and in poverty, in health and in sickness. He will sleep on the cold ground, where the wintry winds blow and the snow drives fiercely, if only he may be near his master's side. He will kiss the hand that has no food to offer, he will lick the wounds and sores that come in encounters with the roughness of the world. He guards the sleep of his pauper master as



**NANCY HALPERN** is the former New Jersey State Veterinarian, the founding member and chair of the Animal Law Practice Group at Fox Rothschild, LLP where she is a partner in the Princeton office, the former chair of the NJSBA Animal Law Committee and is the founding member of the NJSBA Animal Health, Welfare, Agriculture, and Veterinary Practice Law Committee.

if he were a prince. When all other friends desert, he remains. When riches take wings and reputation falls to pieces, he is as constant in his love as the sun in its journey through the heavens.

If fortune drives the master forth an outcast in the world, friendless and homeless, the faithful dog asks no higher privilege than that of accompanying him to guard against danger, to fight against his enemies, and when the last scene of all comes, and death takes the master in its embrace and his body is laid away in the cold ground, no matter if all other friends pursue their way, there by his graveside will the noble dog be found, his head between his paws, his eyes sad but open in alert watchfulness, faithful and true even to death.<sup>6</sup>

Animal Law cuts across virtually every substantive area of the law, including tort, contract, property, family, taxation, trust and estates, insurance, criminal,

**Animal Law cuts across virtually every substantive area of the law, including tort, contract, property, family, taxation, trust and estates, insurance, criminal, administrative, international, and environmental.**

administrative, international, and environmental.<sup>7</sup> In addition to common law, federal, state, and local laws govern issues, including but not limited to: animal health, animal welfare, public health, environmental concerns, public safety, consumer affairs, import and export (interstate and international), and terrorism, impacting animal agriculture, aquaculture, companion animals, animals in entertainment, laboratory animals, exotic animals, marine animals, zoo and aquaria animals, and wild animals. More than 61 federal laws and amended laws govern some of these issues.<sup>8</sup>

In a typical legislative session in New Jersey, there are easily more than 200 bills introduced that directly or indirectly affect animals and animal ownership. While only a few survive the entire legislative process, attorneys representing animal enterprises, including veterinarians, and those advocating for increased animal rights, are involved in legislative advocacy, including testifying at legislative hearings.

### **Animal Rights Advocacy's Intended Consequences**

Attorneys engaged in Animal Rights advocacy have led efforts to “institutionalize animal law classes, scholarly conferences, animal law sections in state, local, and regional bar associations, as well as the American Bar Association...[and]...to spearhead lawsuits, legislative enactments, initiatives, and other means to gain greater protections for animals.”<sup>9</sup> In response, attorneys representing diverse animal enterprises, including veterinarians and veterinary practices, who advocate for the humane care of animals by owners and businesses must be aware of and engage with animal rights attorneys in every venue to adequately counsel and defend their clients.

Legislative and/or litigation strategies

employed by animal rights attorneys and organizations has had the following impact to animals, animal enterprises and the public:

#### ***1. Access to pets***

Pet store bans have been enacted in hundreds of jurisdictions and at least two states—California and Maryland (one still in litigation, pending appeal to the 4th Circuit) under the false narrative that all dog breeders are puppy mills that produce puppies sold by pet stores. The plethora of laws banning or limiting sales of dogs from pet stores to families seeking a dog for long-term companionship have done nothing to improve the lives of dogs bred and sold by substandard dog breeders, because they were never the source of pet store puppies to begin with. What the pet store bans have created, under the false banner that pet stores sell puppies from puppy mills, is an increased marketplace for dog breeders who either negligently or intentionally breed them for the retail rescue marketplace.

The retail rescue marketplace is largely unregulated and the health and welfare of dogs in that marketplace can too often be ignored. Retail rescue dogs are not professionally and carefully bred for animal health and behavioral characteristics that make them optimal for long-term ownership. Instead, they are bred by people only concerned about making a profit or by irresponsible dog owners who negligently permit their dogs to reproduce. Dogs are increasingly being imported by animal rescue organizations from interstate and international sources—more than 1 million dogs are imported annually for resale into the U.S. without adequate health screening.<sup>10</sup>

Today, an ever-increasing number of unhealthy and ill-tempered rescue dogs from both national and international rescues pour into our communities, arriving

with temperament problems and illnesses that threaten U.S. dogs, livestock and the American public. Those illnesses include rabies, a nearly 100% fatal disease, and a novel strain of canine influenza virus that was linked to South China and Korea. That virus affected about 1,300 dogs in Chicago in 2015 with a cost between \$25 million to \$75 million, according to Dr. Edward Dubovi, director of the virology laboratory at the Animal Health Diagnostic Center at Cornell University.<sup>11</sup>

In New Jersey, pet stores are currently permitted to sell puppies but only from certain USDA-licensed breeders.<sup>12</sup> And, pet stores must provide the medical history of each pet, including the timely examination by a New Jersey-licensed veterinarian prior to sale.<sup>13</sup> Each pet store must also provide a warranty for each pet so the consumer has options if the pet is diagnosed with an infectious disease within 14 days after the sale or a congenital disorder within six months after the sale.

In contrast, none of these protections exist for pets obtained from animal rescue organizations or animal shelters in New Jersey. Animal rescue organizations are not even required to register with the state or municipal government and are not governed by laws requiring the health and welfare of animals. Neither the rescues nor the shelters are required to provide consumers with the medical and behavioral records of an adopted pet or provide any warranty of health post-adoption.

An increasing number of pet owners are seeking legal redress when adopted pets have intractable and costly medical conditions, or behavioral disorders that create safety issues for families. Shelter and rescue contracts, often “contracts of adhesion,” seemingly strip the consumer of all rights, including the right of ownership. Legal representation is often the

**[A]ttorneys representing diverse animal enterprises, including veterinarians and veterinary practices, who advocate for the humane care of animals by owners and businesses must be aware of and engage with animal rights attorneys in every venue to adequately counsel and defend their clients.**

only way consumers can prevail when unwittingly saddled with sick or behaviorally unstable pets.

## **2. Non-economic damages**

The question of whether a pet owner can be awarded monetary damages for their emotional distress resulting from the tortious injury or death to a pet, whether by a veterinarian, another pet, as a result of a car accident, or by a law enforcement officer, has been considered in many jurisdictions and largely rejected.<sup>14</sup> In New Jersey, the Supreme Court has held that a plaintiff could not be compensated for emotional harm when not injured themselves unless witnessing the brutal death of a spouse or child.<sup>15</sup>

Damages for pets in these cases can include the pet's "intrinsic value," which is an alternative measure of a pet's economic worth but does not include emotion-based damages. The ability to award emotion-based damages could result in higher costs of veterinary care and other pet services, which could render those services unaffordable to many. Without the ability to obtain costly veterinary care, the quality of pets' lives could suffer. This is the primary reason many veterinarians, veterinary trade associations and others in the pet care industry have opposed attempts to provide non-economic damages to pet owner.<sup>16</sup>

## **3. Farm animal protection: Livestock and poultry husbandry bans**

The last example of intended consequences involves bans of livestock hus-

bandry practices. In New Jersey, where there are no hog farmers using gestation stalls for pregnant sows or veal stalls where veal calves are tethered, there have been bills introduced banning these husbandry practices since at least 2000. Not only would the bills, if enacted,<sup>17</sup> not change the care of any livestock in New Jersey, they would circumvent the process adopted to ensure science-based humane standards of care are regulated in the state.

At the request of New Jersey Department of Agriculture (NJDA), New Jersey Agricultural Experiment Station (NJAES), and New Jersey Farm Bureau, state legislators passed a law in 1996 "which directs the Department of Agriculture—in consultation with the New Jersey Agricultural Experiment Station—to adopt 'standards for the humane raising, keeping, care, treatment, marketing, and sale of domestic livestock,' as well as 'rules and regulations governing the enforcement of those standards.'"<sup>18</sup> At the time, livestock owners were increasingly concerned about the inconsistent enforcement of New Jersey's animal cruelty statutes by state and county societies for the protection of animals, who often had minimal, if any, knowledge about the proper care of livestock and horses. As the State Commission of Investigation reported, there were "no standards, rules or guidelines governing [SPCA's] composition, operation, training or activities, there is no consistency or uniformity in their make-up, functioning or enforcement of the laws."<sup>19</sup>

The 1996 law was adopted to "[p]rotect...the health and well-being of New Jersey's livestock...to ensure farm animals are humanely treated. This includes livestock farmers whose livelihood depends on raising healthy animals and who, therefore, have an added financial incentive to properly care for their animals."<sup>20</sup> To ensure the involvement of experts qualified to investigate complaints of cruelty involving livestock, the law also requires notification of the New Jersey Department of Agriculture of complaints received by investigating authorities.

In 2014, then-Gov. Chris Christie vetoed legislation that would have banned the use of gestation stalls in New Jersey, stating "I will rely on our in-state experts rather than the partisan politicians who sponsor this bill."<sup>21</sup>

The consequences of non-science-based husbandry bans include the elimination of methods of housing that typically evolve to improve animal welfare, if permitted. Sow housing, for example, has evolved over time. Housing sows indoors was first employed to protect the sows and piglets from infectious disease, predators and weather extremes. Over time, it became clear that separating sows from each other was necessary to prevent fighting. Now permitted housing allows a sow to choose a separate competition free feeding stall or group setting for sow socializing when they so desire. Banning individual gestation stalls, would eliminate this evolved housing opportunity.



In addition, bans on husbandry practices can create negative financial burdens which fall largely on consumers for whom impacted animal products constitute important sources of protein. In California, where Prop 12<sup>22</sup> was just upheld by the U.S. Supreme Court, the California Department of Food and Agriculture<sup>23</sup> predicts:

California consumers will be affected by higher prices...in the 2022 calendar year, we estimate that the proposed regulations will increase total consumer expenditure in California on liquid eggs by about \$36 million, decrease total consumer expenditure on veal meat by \$9 million, increase expenditure on shell eggs by \$960 million, and increase expenditure on pork meat by \$174 million. This would result in a net increase in consumer expenditure on liquid eggs, veal, shell eggs, and pork of \$1.2 billion.<sup>24</sup>

California's in-depth report about the impact of Prop 12 dispelled the myth often repeated by animal rights organizations that animal agriculture practices lead to increased incidences of disease in farmed animals that can also infect people. The California report refuted these mischaracterizations finding no scientific conclusive links "between animal housing space allocation, such as cage size, and human food-borne illness, worker safety, environment, viruses and other transmittable diseases, or other human health, or safety."<sup>25</sup>

## Conclusion

The most important consideration for attorneys practicing in this space is the recognition of the disparate goals of those involved in "animal law." On the one hand, attorneys represent people, businesses and organizations that support the continued humane care and use of animals by people and businesses. On the other hand, attorneys represent organizations and individuals who oppose animal ownership and argue for

increased legal rights for animals, independent of their current status as property, albeit cherished by many owners. Litigation and legislation advanced by those promoting enhanced animal rights is often cloaked in a false narrative of animal welfare, when the goal may actually be the elimination of animal ownership for personal companionship, as well as in animal agriculture, exhibition by zoos and aquaria, breeding, equestrian sport, biomedical research and veterinary medicine.

In her history of animal law, Tischler describes what she calls a 'split' in the 'approach to the practice of animal law,' which she characterizes as 'rights versus welfare reform'...It is often said that advocates of animal rights seek to end all human use of animals for the benefit of humans or animals. In contrast, advocates of animal welfare are said not to oppose human use of animals in general, or most traditional uses in particular (such as raising animals for meat); rather, they attempt to improve the lives of animals used in these ways by preventing them from suffering unnecessary pain or distress or by promoting their health and well-being.<sup>26</sup>

Some animal rights groups profess to work for improved animal treatment but can have other agendas, according to the Capital Research Center, a nonprofit organization that has been critical of animal rights efforts stating that the ultimate goal of some animal rights groups is to "abolish the following: 1) breeding and ownership of pets; 2) use of animals in biomedical research; 3) raising farm animals for food, clothing, by-products such as insulin; 4) use of animals in education and entertainment, including zoos, aquariums, circuses and rodeos; and 5) all forms of hunting (including field trial competition, trapping and fishing), according to Capital Research Center."<sup>27</sup>

Attorneys in New Jersey who choose to practice "animal law," have a bright

future. But to properly represent and advocate for their clients, attorneys must understand the entire landscape of "animal law" and be able to identify whether the goals of adversaries is to advance animal rights or animal welfare. ■

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## Endnotes

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12. There are no active USDA licensed

Class A dog breeders in New Jersey at this time.

13. NJSA §§56:8-92-96.
14. There are two states that permit limited damages in certain cases-Tennessee and Illinois.
15. P.Goldberg and N.Halpern, Barking up the Wrong Tree, 209 NJ Law J 12 (2012); see also, McDougall v. Lamm, 211 N.J. 203 (2012).
16. P.Goldberg and N.Halpern, Barking up the Wrong Tree, 209 NJ Law J 12 (2012)
17. The bill in New Jersey may be enacted by the time this article is published.
18. 35 NJR 1873(a) (2003).
19. NJSCI Report (2000).
20. 35 NJR 1873(a) (2003).
21. If the bill passes in New Jersey, one of the most damaging results will be the diversion from a science-based agricultural standard to one that is based on emotions and promoted by animal rights organizations with the ultimate goal to eliminate animal agriculture entirely.
22. Prop 12 was a ballot initiative which passed in California in 2018 which prohibits the confinement of calves raised for veal, breeding pigs, and egg-laying hens in areas below a specific number of square feet bans the sale of (a) veal from calves, (b) uncooked pork from breeding pigs, and (c) shelled and liquid eggs from hens when the animals are confined to areas below minimum square-feet requirements. California Proposition 12, Farm Animal Confinement Initiative (2018) available at [ballotpedia.org/California Proposition 12, Farm Animal Confinement Initiative](http://ballotpedia.org/California_Proposition_12,_Farm_Animal_Confinement_Initiative) (2018).
23. Standardized Regulatory Impact Assessment of Proposed Regulations to Implement Proposition 12 Prepared for the California Department of Food and Agriculture (2020).
24. Standardized Regulatory Impact Assessment of Proposed Regulations to Implement Proposition 12 Prepared for the California Department of Food and Agriculture (2020), p 58.
25. Standardized Regulatory Impact Assessment of Proposed Regulations to Implement Proposition 12 Prepared for the California Department of Food and Agriculture (2020), p 57.
26. J.Tannenbaum at 902.
27. Animal "Rights" is about abolition, not animal cruelty, says Responsible Pet Owners Alliance of Texas, available at <https://www.prnewswire.com/news-releases/animal-rights-is-about-abolition-not-animal-cruelty-says-responsible-pet-owners-alliance-of-texas-300107739.htm>.



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# *Houseman* and Beyond

## Litigating Disputes Over Companion Animals

By Gina Calogero

Litigating pet custody was unpredictable before the 2009 landmark decision *Houseman v Dare*.<sup>1</sup> The *Houseman* case held that cohabitating couples who acquire a pet for their mutual benefit are entitled to specific performance of a pet-sharing agreement, and if no agreement exists, a court of equity can fashion one. I represented plaintiff Doreen Houseman for the trial, the appeal, and the remand.



## An Insider's View of *Houseman*

Animals are property.<sup>2</sup> Although *Houseman* did not change this axiom, the decision turned on the unique nature of a living pet and the emotional bond that makes it special to its owner.

In 2003, Eric Dare bought a purebred pug puppy named Dexter while cohabiting with Doreen Houseman in a house they jointly owned. Dexter was their surrogate child. They celebrated his birthday with cake, candles and cone-shaped hats, signed his name to Christmas cards, and took him trick-or-treating in matching costumes at Halloween. On Mother's Day and Father's Day, Doreen and Eric sent each other cards "from" Dexter.

When they broke up in 2006, Eric unilaterally calculated Doreen's share of the equity in their home. The parties exchanged possession of Dexter twice a week for several months. But when Eric unexpectedly refused to return him to Doreen, she filed suit in family division seeking palimony, specific enforcement of their oral agreement to share the dog, and damages for unjust enrichment in the transfer of the house. The trial court excluded all evidence regarding the alleged agreement for possession of the dog. Doreen received over \$30,000 in damages, including partial reimbursement of counsel fees and Dexter's stipulated \$1,500 value. The judge reasoned that he had no authority to award possession of a "thing" even if it was "cute and furry." Doreen appealed.

The appellate division reversed and ordered a trial on remand to determine

whether a dog sharing agreement existed. The holding was based on precedent from torts and general equity. *Hyland v. Borrás* held that a family pet has "no calculable value" except as arising from "the length and strength of the owner's attachment."<sup>3</sup> The "subjective value" of an animal to the owner precludes treating it as fungible property. Analogizing to an heirloom, family treasure, or work of art, and citing *Burr v. Bloomsburg*, the court held that specific performance of the shared possession agreement was the only way to make the plaintiff whole.<sup>4</sup> The court rejected the "best interests" standard advanced by amicus curiae Lawyers in Defense of Animals and the Animal Legal Defense Fund.

## The Remand and Aftermath

The remand trial lasted three days. The trial judge found that both parties loved Dexter and were equally sincere in their attachment. However, he declined to recognize an enforceable agreement. Thus, the judge was free to craft an equitable schedule of joint possession for alternating five-week periods to minimize contact and animosity between the parties.

Eric Dare appealed the verdict, arguing that a paid receipt in his name for Dexter's purchase was dispositive of his sole ownership. The plaintiff's opposition brief cited the palimony case of *Connell v. Diehl*, where the plaintiff was awarded an equitable interest in real property acquired for the parties' joint interest but which was titled in the

defendant's sole name.<sup>5</sup> Doreen also argued that because she and Eric had shared the "benefits and burdens" of pet ownership, the dog should be treated as joint property, just as the non-titled owner of a dog who bit a child was held liable in *Pippin v. Fink*.<sup>6</sup> Eric's appeal was denied without commentary in an unreported opinion.<sup>7</sup>

Dexter became an overnight celebrity, featured in articles in *Reuters*, *the Associated Press*, and the *New Jersey Law Journal*. He proved a well-behaved and photogenic guest on cable television shows. Ultimately, Eric Dare gave up possession after 18 months of sharing Dexter. Doreen enjoyed sole ownership until Dexter passed the rainbow bridge four years ago.

## Practical Considerations, Nuts-and-Bolts Tips

What is the recipe for trying a pet custody case? Unfortunately, *Houseman* does not provide step-by-step instructions, only guidelines. First, the court must decide whether a valid agreement exists. The next step is to determine whether the parties' attachment

...is sincere and grounded in "facts and circumstances which endow the chattel with a special value" or based upon a sentiment assumed for the purpose of litigation out of greed, ill-will or other sentiment or motive similarly unworthy of protection in a court of equity.<sup>8</sup>

Finally, the court should craft a solution that takes into consideration the



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# Pet custody disputes have grown in number and scope since *Houseman*. This is hardly surprising, considering the value Americans place on their pets. In my own practice, I have litigated custody over dogs, cats, parrots, a rabbit, and even a pig.

specific facts of the case, with as much creativity as required.

For example, I have had the honor of serving as a *Guardian Ad Litem* in a Bergen County divorce and filing a report with the court recommending shared possession of a Golden Doodle. Another practical approach is to hold a *pendente lite* “*Houseman* hearing.”

A trial judge in Middlesex County gave me permission to bring the parties’ dog Nymeria to court in 2019 for a live demonstration of how each had bonded with her. Nymeria eloquently made the plaintiff’s case without words: she gazed lovingly at my client, vocalized while he testified, and jumped into his lap when he returned from the witness stand.

Absent abuse or neglect as defined in Title 4, which may be proved by physical evidence or witness testimony, the best interests of the pet are not normally considered. Video recordings can be particularly effective and are often available in this age of smart phones. My client was awarded sole possession of a dog, on the strength of a video of the defendant taking her anger out on the dog, who cowered and cried pitifully as it tried to escape her wrath. Best interests can be stipulated by the parties with permission of the court. Mediation can also be an effective tool for resolving disputes in lieu of litigation, provided that the mediator has experience with pet custody or at least appreciates the pet-human bond. A mediator can consider the pet’s best interests though a court may decline to do so.

## Beyond *Houseman*

Pet custody disputes have grown in number and scope since *Houseman*. This is hardly surprising, considering the value Americans place on their pets. In my own practice, I have litigated custody over dogs, cats, parrots, a rabbit, and even a pig. Litigants have included married couples, unmarried cohabitants, and even parents suing their children. Marital Settlement Agreements and Prenuptial Agreements—which I affectionately call “Pup Nups”—should include detailed provisions regarding family pets. Possession of a pet is now included as relief for a victim under the Prevention of Domestic Violence Act.<sup>9</sup> A Final Restraining Order can include a provision for “possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household.” If the abuser abused or threatened harm to the animal, “there shall be a presumption that possession ... shall be awarded to the non-abusive party.”

Citations to *Houseman* appear in varied reported and unreported decisions. In the context of a divorce, *Mitchell v. Mitchell*<sup>10</sup> affirmed the denial of the plaintiff’s post-judgment motion for custody of a cat, finding that she had relinquished ownership in the parties’ divorce agreement and that she had failed to make a sufficient showing that the cat subsequently had been neglected.<sup>11</sup>

Pets are more than fungible property, but under New Jersey law, they are still not actual members of a family. *Portee v.*

*Jaffee* created a cause of action for emotional distress damages to a bystander under the following circumstances:

1. the death or serious physical injury of another caused by defendant’s negligence;
2. a marital or intimate, familial relationship between plaintiff and the injured person;
3. observation of the death or injury at the scene of the accident; and
4. resulting severe emotional distress.<sup>12</sup>

In *McDougall v. Lamm*,<sup>13</sup> the New Jersey Supreme Court declined to extend *Portee* damages to a plaintiff who witnessed the violent death of her dog. Acknowledging the special status of pets as held by *Houseman* and *Hyland*, and the emotional bond between people and their pets, the Court nonetheless declined to elevate it “to the level of a close familial relationship or intimate, marital-like bond.”<sup>14</sup>

Conversely, in an unreported case, the appellate division distinguished between direct claims for negligent infliction of emotional distress and a claim for emotional distress under *Portee*. In *Quesada v. Compassion First Pets Hosps.*,<sup>15</sup> the appellate division reversed an order dismissing the complaint with prejudice. After having his terminally ill cat euthanized by the defendant veterinarian, the plaintiff had planned a family viewing before cremation of the remains. To his shock, he discovered that the cat had been decapitated. He sued the veterinary hospital for

failing to inform him that the method of obtaining a “brain tissue sample” for a rabies test involved dismembering and disposing of its head. The court reinstated the complaint, finding that plaintiff’s claim alleged direct liability and did not arise from bystander liability.

### What’s Next?

Not surprisingly, there was little consistency among the counties as to where pet custody complaints should be filed: civil part, family part, or general equity? The resulting increase in court disputes over pets resulted in an Aug. 29, 2016,<sup>16</sup> operational guidance memo from the AOC to Assignment Judges clarifying the issue, as follows:

#### (6) Pets

If the only issue involves ownership of a pet, the matter shall be filed and heard in the Civil Part. If, however, there are other issues related to a family or family-type relationship, then the issue of the pet shall be included within those claims and filed and heard in the family part.

There are exceptions. For example, I have filed suit in general equity when my client also asserted for equitable partition of real property, quasi-contract, and unjust enrichment.

Pets are chattels with a unique and special significance. Because they will always have a special place in our homes and our hearts, disputes over their possession and ownership will become more frequent and common place. Lawyers, especially family law practitioners, would do well to familiarize themselves with this emerging area of law. ■

### Endnotes

1. *Houseman v. Dare*, 405 N.J. Super. 538 (App. Div. 2009)
2. *Harabes v. The Barkery*, 348 N.J. Super. 366 (Law Div. 2001)
3. *Hyland v. Borrás*, 316 N.J. Super. 22, 25 (App. Div. 1998)
4. *Burr v. Bloomsburg*, 101 N.J. Eq. 615, 621 (Ch. 1927)
5. *Connell v. Diehl*, 397 N.J. Super. 477, 489 (App. Div. 2008)
6. *Pippin v. Fink*, 350 N.J. Super. 270 (App. Div. 2002)
7. *Houseman v. Dare*, A-1263-09T3 (App. Div. 2010)
8. *Houseman*, supra, 405 N.J. Super. at 545.
9. N.J.S.A. 2C:25-29.1(19)
10. *Mitchell v. Mitchell*, A-2679-08T2 (App. Div. 2010)
11. Her only evidence was that the defendant had not taken the cat to the veterinarian and that the cat had lost one pound since the divorce.
12. *Portee*, 84 N.J. at 101.
13. *McDougall v. Lamm*, 211 N.J. 203, 229 (2010)
14. *McDougall*, 211 N.J. at 207
15. *Quesada v. Compassion First Pet Hosps.* A-1226-19 (App. Div. 2021)
16. Memo dated Aug. 29, 2016, from Glenn A. Grant, J.A.D. to Assignment Judges re Clarification as to Where Certain Categories of Cases Should Be Heard—Civil, Family and General Equity.

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# Domestic Violence and Pets

A black and white dog, possibly a Papillon or similar breed, is lying on a dark, textured surface. The dog has long, fringed ears and a white blaze on its face. It is looking directly at the camera with a calm expression. The background is dark and out of focus, with some warm, orange light visible in the distance.

## Why Does the Dog Matter to Your Family Practice?

By Michelle Newton



# A

client has just entered your office. They are seeking a domestic violence restraining order against their long-term partner. You start by asking them to tell you about what brought them to your office today. In that initial client interview, you will be paying close attention to various information that will help you to assess their case and give them counsel. You want to determine whether the jurisdictional factors are met. You will be asking them to tell you about why they are seeking a court order at this time. You will be delving into the history, and past acts of domestic violence.

Then, you may move on to the relief that can be sought—what does this client need to support them and their family’s safety and well-being? Are there children? Is there a joint home, and if so, who pays the rent or mortgage? What are the bills that need to be paid, at least on an interim basis? Do we need to request substance abuse evaluations, anger management, or other interventions?

Less commonly thought of, are the pets. However, questions about whether your client has a pet or pets, what type of pet, and what they want to happen with this pet, are an essential part of any initial interview.



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### Why Should Family Lawyers Ask About The Pets?

In representing a victim of domestic violence, knowing about pets in the home is important for many reasons. Abuse, neglect or threats to an animal may actually be a part of your client’s history of domestic violence and/or the predicate act. Your client may be afraid for the pet’s safety if they leave the pet with their partner. They may be staying temporarily in a domestic violence shelter, home rental or with friends or family—these accommodations may or may not allow pets.<sup>1</sup> The pet may be used against your client to try to compel them to return.

Consider the following:

1. The link between domestic violence, child abuse, and animal abuse is well recognized. It is not surprising that animal abuse has been found to be more prevalent in homes that experience child abuse and domestic violence.<sup>2</sup> A study from 2007 “found that women seeking refuge at a family violence shelter were 11 times more likely to report that their partner had hurt/killed their pet[.]”<sup>3</sup>
2. Concern about a pet’s safety is often an impediment to separating from an unsafe situation. RedRover reports that “as many as 48% of domestic vio-

lence survivors delay leaving their abusers because they are concerned for their pet’s safety.”<sup>4</sup>

3. Abusing, neglecting or threatening a family pet can be a form of abuse to an intimate partner, child, or other household member. “Pets and/or farm animals are often threatened, harmed or neglected as a means of controlling an abused woman, and it is common for women to delay seeking help out of fear for their animals.”<sup>5</sup>
4. Threats made or actions taken against a pet, whether abuse or neglect, can cause a survivor of domestic violence to return to an unsafe situation. “As many as 25% of survivors will return because the abuser is using their pet as a means to get the person back.”<sup>6</sup>

We will assume that you have added these important questions to your initial interview, and you now know that your client has a pitbull mix called Charlie. They and their partner adopted Charlie together, and their children are deeply attached to him. Your client worried that their partner will surrender Charlie to the local animal shelter, as they have threatened to do many times during their relationship. In the recent past, their partner has also started telling them that they will physically harm Charlie. Your client also concerned about



their legal rights to Charlie, because they are fairly certain that their partner's name is on the adoption contract. We next consider what New Jersey law can offer your client.

### **Applying the New Jersey Prevention of Domestic Violence Act: Case Preparation**

The New Jersey Prevention of Domestic Violence Act comprehensively outlines the means by which a victim of domestic violence may seek an order of protection.<sup>7</sup> In New Jersey, a victim first files a "complaint alleging the commission of an act of domestic violence with the Family Part of the Chancery Division of the Superior Court,"<sup>8</sup> or, if the Court is closed, such complaints may be accepted and escalated to a judge through local police departments.<sup>9</sup> This complaint is heard on an emergent, *ex parte* basis, in order to determine if a temporary restraining order shall be issued.<sup>10</sup>

*N.J.S.A.* 2C:25-28 sets forth the reliefs available within such a temporary restraining order. It is specifically noted that "appropriate relief" includes "an order directing the possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household and providing that the animal shall not be disposed of prior to entry of a final order pursuant to

section 13 of P.L.1991, c. 261 (C.2C:25-29)."<sup>11</sup>

When you are advising your client, consider the expansive scope of this relief. They are worried about their partner having signed the adoption papers; however the animal listed on a temporary restraining order can be "owned, possessed, leased, kept, or held" by either your client, their partner, or any of their minor children residing in the household. Your client worried about their partner being free to surrender Charlie; however the court can order the animal's possession, *and* that the animal may not be "disposed of" while the temporary restraining order remains in effect.<sup>12</sup> Your client may even benefit from providing a copy of the order to the municipality's animal shelter, if their concerns are specific to one or a finite number of locations.

### **Applying the New Jersey Prevention of Domestic Violence Act: The Hearing**

Once a temporary restraining order is issued and served upon the defendant, a hearing date for a final restraining order is set. During the hearing, you can expect that testimony will be taken, and evidence will be entered. The legal standard to secure a final restraining order is clear: "First, the judge must determine whether

the plaintiff has proven, by a preponderance of the credible evidence, that one or more of the predicate acts set forth in *N.J.S.A.* 2C:25-19a has occurred."<sup>13</sup> Then, the judge must decide "whether a domestic violence restraining order is necessary to protect [the] plaintiff from immediate danger or further acts of domestic violence." In making this determination, the court should consider the prior history of domestic violence, if any.<sup>14</sup>

How can the information your client told you about Charlie help shape your presentation of their testimony and evidence?

When considering the second prong of the analysis above, you are thinking of the history of domestic violence that your client disclosed to you. Under the New Jersey Prevention of Domestic Violence Act, "domestic violence" is the occurrence of one or more of 19 acts defined under the criminal code, *N.J.S.A.* Title 2C. Harassment is one of the 19 predicate acts.<sup>15</sup> A person commits harassment if, "with the purpose to harass another," that person "[m]akes, or causes to be made, one or more communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm; or Subjects another to striking, kicking, shoving, or other offensive touching, or

**The link between domestic violence, child abuse, and animal abuse is well recognized. It is not surprising that animal abuse has been found to be more prevalent in homes that experience child abuse and domestic violence. A study from 2007 "found that women seeking refuge at a family violence shelter were 11 times more likely to report that their partner had hurt/killed their pet[.]"**

threatens to do so; or Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.”<sup>16</sup> Arguably, the partner’s pattern of threats to harm Charlie fits within this legal definition of harassment. Consider if these threats to hit Charlie were made to or in your client’s presence, were directed at your client, and if it reasonable that these threats were made with the purpose to alarm them. In this portion of the case, the focus is primarily on the purpose of these threats, and the effect on the victim. If the partner was secretly abusing Charlie, this may be compelling to argue that your client should keep the dog in the “relief” portion of the order, but it will not give grounds for a finding of harassment and domestic violence against your client’s partner.

### Applying the New Jersey Prevention of Domestic Violence Act: Relief

Finally, assuming a final restraining order is granted, we turn to the relief. We already know that the possession of the pet is allowed in the temporary restraining order. The scope of relief that may be ordered upon entry of a final order is set forth in *N.J.S.A. 2C:25-29*, and again, the Legislature considered the animals. Under this statute, a court may enter “[a]n order directing the possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household. Where a person has abused or threatened to abuse such animal, there shall be a presumption that possession of the animal shall be awarded to the non-abusive party.”<sup>17</sup>

From start to finish, your diligent consideration of the family’s animal has helped you to advocate more zealously, and more holistically, for your client. ■

### Endnotes

1. Do not underestimate the helpfulness of gathering and sharing community resources with your clients! In cases where it may not be feasible to bring the animals, but leaving them with an abusive party is also not an option, it is helpful to keep resources to share with your clients, such as local animal shelters that may offer temporary crisis care. One such resource in New Jersey is St. Hubert’s Safe Haven Program.
2. Phillips, A. (2014). *A Guidebook for Criminal Justice Professionals*. [online] Available at [nationallinkcoalition.org/wp-content/uploads/2014/06/Allies-Link-Monograph-2014.pdf](http://nationallinkcoalition.org/wp-content/uploads/2014/06/Allies-Link-Monograph-2014.pdf) [Accessed 5 Jun. 2023].
3. *Id.* at 9 (citing Ascione, F. R., Weber, C. V., Thompson, T. M., Heath, J., Maruyama, M., & Hayashi, K. (2007). Battered pets and domestic violence: Animal abuse reported by women experiencing intimate violence and by nonabused women. *Violence Against Women*, 13(4), 354-373; Volant, A. M., Johnson, J. A., Gullone, E., & Coleman, G. J. (2008). The relationship between domestic violence and animal abuse: An Australian study. *Journal of Interpersonal Violence*, 23, 1277-1295).
4. RedRover. *RedRover Helps People and Pets Escape Abuse Together*. [online] Available at [RedRoverDVPrograms2023.pdf](http://RedRoverDVPrograms2023.pdf) [Accessed 20 Sept. 2023]; see also *Id.* at 9 (citing Ascione, F. R. (2007). Emerging research on animal abuse as a risk factor for intimate partner violence. In K. Kendall-Tackett & S. Giacomoni (Eds.), *Intimate partner violence* (pp. 3.1-3.17). Kingston, NJ: Civic Research Institute).
5. *Id.* at 10 (citing Doherty, D. & Hornosty, J. (2008). Exploring the Links: Firearms, Family Violence and Animal Abuse in Rural Communities, The Latham Letter (Summer 2008) at [albertaspca.org/resources/publications/DohertyHornosty%20Report%20\(Latham\)%20ExecSummary2008.pdf](http://albertaspca.org/resources/publications/DohertyHornosty%20Report%20(Latham)%20ExecSummary2008.pdf)).
6. ASPCA. (n.d.). *Protecting All the Victims of Domestic Violence*. [online] Available at: [aspc.org/blog/protecting-all-victims-domestic-violence](http://aspc.org/blog/protecting-all-victims-domestic-violence) [Accessed 5 Jun. 2023].
7. *N.J.S.A. 2C:25-1 et seq.*
8. *N.J.S.A. 2C:25-28(a)*.
9. *Ibid.*
10. *Ibid.*
11. *Ibid.* (emphasis added.)
12. *Ibid.*
13. *Silver v. Silver*, 387 *N.J. Super.* 112, 125 (App. Div. 2006).
14. *Id.* at 128. It should also be noted that, “[a]lthough it is clear that a pattern of abusive and controlling behavior is a classic characteristic of domestic violence... the need for an order of protection upon the commission of a predicate act of ‘domestic violence,’ as specifically defined in *N.J.S.A. 2C:25-19a*, may arise even in the absence of such a pattern where there is ‘one sufficiently egregious action.’” *Ibid.* (citing *Cesare v. Cesare*, 154 *N.J.* 394, 397-98, 402 (1998); internal citations omitted).
15. *N.J.S.A. 2C:33-4*.
16. *N.J.S.A. 2C:33-4*.
17. *N.J.S.A. 2C:25-29(b)(19)*.

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# The Dog Ate My Kids' Inheritance

## Providing for Pets in an Estate Plan

By G. Warren Whitaker



**E**state planning lawyers don't typically spend a lot of time focusing on provisions for pets in their clients' wills. They often feel that this topic is unworthy of their attention and prefer instead to focus on Grantor Retained Annuity Trusts, charitable remainder trusts, family limited partnerships and other sophisticated tax planning techniques. Our clients, however, are often very interested in seeing that their pets are properly cared for after they are gone. Lawyers who want to represent their clients well, therefore, must familiarize themselves with this area.

At common law, providing for pets posed something of a challenge. Obviously, a pet cannot be the recipient of a bequest or the beneficiary or measuring life of a trust. Today, all 50 states have statutes allowing for pet trusts, which we will examine in the second half of this article. But first we consider some of the solutions lawyers employed under the common law, which may still be useful today.

The traditional technique was to bequeath the pet (which is tangible personal property) to the proposed caretaker along with a dollar bequest and to state in the will the testator's hope that the beneficiary would use the money to take good care of the pet. This is still the simplest approach but it depends entirely on trusting the caretaker and hoping that they outlive the pet. In addition, the amount of the bequest is fixed regardless of whether the pet lives for one year or 20. The beneficiary is responsible for investment of the funds, and if the beneficiary spends all the money in Year One, it is up to them whether to dip into their own funds to provide for the pet after that. They also may realize a windfall if the bequest is meant to cover 20 years of care but the pet dies in Year Two.

A more elaborate arrangement under common law was to create a trust for the benefit of the proposed caretaker, with an independent trustee to manage the money. The trust would pay a fixed amount to the caretaker as well as provide reimbursement for expenses for each year that the pet was alive and being properly cared for in the judgment of the trustee.

To ensure that the trust did not violate the Rule against Perpetuities, since the pet's life could not be a measuring life, the trust could continue for a fixed term of 21 years, or else a broad class of human measuring lives could be selected, with power vested in the trustee to terminate the trust earlier if the pet died. The trustee would have to guard against the possibility that the pet might die and be replaced by a lookalike if the caretaker wanted to continue receiving payments. (Don't laugh—this has happened.) Annual DNA testing could be required to address this problem. Of course, the trustee has the burden of enforcement and will charge a fee if they are willing to take this on.

Now let's look at the statutes. Every state has a statute permitting pet trusts, but they are all different, so the statute for the state of the testator's residence must be carefully consulted. Below we discuss the New Jersey statute, which is fairly representative of other states' statutes, and then highlight some of the salient differences found in the pet statutes of Florida, New York, Connecticut and Massachusetts.

### **New Jersey Law**

New Jersey enacted its first statute allowing trusts for the care of animals in 2001. Trusts created under that statute terminated when no living animal was covered by the trust, or at the end of 21 years, whichever occurred earlier. In 2016, a new statute provided for the creation of such trusts, enforcement of their provisions, and limits on the use of the trust property, and gave the courts discre-

tion in cases of excessive trust funding.

The current New Jersey statute provides that a trust for the care of an animal may be created either by will or by inter vivos trust agreement, as long as that animal is alive during the settlor's lifetime. The trust must terminate upon the death of the animal, or, if the trust was created to provide for the care of more than one animal, upon the death of the last surviving animal. The terms of the trust may be enforced by any of the settlor, an enforcer appointed in the trust, or an enforcer appointed by the court. Any person who has an interest in the animal's welfare may request that the court either appoint an enforcer or remove an appointed enforcer. Trust property may only be applied for its intended use of caring for the pet, except where funds exceed the amount required, in which case excess funds will be returned to the settlor, if living, or otherwise paid to their estate.

The current statute resolves the issue



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of pets who live for over 21 years beyond the point where the settlor has created the trust, such as a bird or a turtle. It also allows a settlor to provide for multiple animals in one trust, instead of requiring a separate trust for each animal. Rather than creating a trust for each pet, a settlor can create a trust “for all of my pets who are living with me at the time of my death” and provide for animals that are adopted after the trust instrument is drafted.

### **Beyond New Jersey**

The Florida statute is nearly identical to the New Jersey statute. The major difference is that the Florida statute does not specifically allow the settlor to enforce the terms of such a trust. However, the settlor would (if living) qualify as a person having an interest in the welfare of the animal, and so would be able to petition the court to appoint an enforcer or to remove a person appointed. Of course, the settlor cannot enforce the terms if he/she is incapacitated or deceased.

The New York statute is very similar to the New Jersey statute, except for three major differences. New York provides for a trustee to enforce the terms of the agreement, in addition to any trust-designated enforcer or court-appointed enforcer. The statute also allows for trust assets to be used for purposes other than the benefit of the animal or animals, if the trust instrument expressly allows. Lastly, if there is no trustee designated or willing or able to serve, the court shall appoint one.

Connecticut has a much more involved statute. First, it requires that trusts designate a “trust protector,” whose only duty is to act in the best interest of the animal or animals provided for. While the trust protector is not a trustee, they can be replaced in the same manner as a trustee. Connecticut also specifies which courts have jurisdiction over these

trusts. The trustee of such a trust is required to render an account to the trust protector annually, whereas in New Jersey an accounting would only be required on request. The trust protector can file a petition to enforce the trust or to remove or replace any trustee. The court may award costs and attorney’s fees to the trust protector, to be paid out of trust property, if the court finds that the filing of such a petition was necessary to fulfill the trust protector’s duty. The trust protector may request that the Connecticut Attorney General files a petition to enforce trust provisions, remove or replace any trustee, or seek restitution from a trustee. Lastly, the statute provides an extensive order of priority in distributing excess trust property.

The Massachusetts statute is similar to the New Jersey statute, except that it allows for the trust instrument to provide for an earlier termination than the death of the last covered animal. The statute also specifies that no income or principal can be used for anything other than the benefit of covered animals, reasonable trustee fees and administration expenses. The statute provides an order of distribution if the court finds there is property in excess of the amount required for the intended use.

### **Case Law**

There is some precedent for property that is found to be in excess of its intended use. When billionaire businesswoman Leona Helmsley passed away in 2007, she left a \$12 million trust fund to her dog, a Maltese named Trouble. While it was a relatively minor portion of the hotelier’s estate, estimated at over \$4 billion, this represented quite a windfall for Trouble. Trouble’s annual expenses included over \$100,000 for security and \$60,000 in guardianship fees for her caretaker, along with other expenses such as grooming and dog food. Although the trust fund

had a charitable foundation as its remainder beneficiary, the estate tax charitable deduction is not allowed for assets passing to a pet trust. Pursuant to the excessive funding provision of the New York pet trust statute, the bequest was later reduced by the Surrogate’s Court to \$2 million at the request of her executors in order to reduce estate taxes. The excess amount was distributed to other beneficiaries, despite Helmsley’s clear intentions. Her story should serve as a cautionary tale for anyone who plans to put significant assets in a pet trust, as doing so could spell Trouble for any estate plan.

In any arrangement for pets, selecting the person who will provide for the pet’s physical care is of utmost importance. In this respect, the caretaker for the pet is similar to the guardian of a child. A valid pet trust can be established with or without expressly designating a caretaker, similar to making financial provisions for a beneficiary whose guardian can be named in a separate instrument. However, the arrangement is different from a guardianship in that pets are considered tangible personal property. If a pet is left to the caretaker as a bequest, and a pet trust is established to provide support for that pet, then the caretaker will assume all rights as the new owner. While the trustee of a pet trust will have a fiduciary duty to safeguard the trust funds and use them to provide for the pet, there is nothing stopping the caretaker from having the pet euthanized. By placing the pet itself into the pet trust, an owner can ensure that the fiduciary duty of the trustee extends to their pet. Including general pet care guidelines, along with a carefully designated caretaker, can help achieve the owner’s goal of allowing their companion to live a long, happy life. ■

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# Paw Prints on our Hearts

## Emotional Distress Damages for Pet Loss in New Jersey

By Emerald E. Sheay

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**EMERALD E. SHEAY** is an associate with the firm of Gomperts McDermott & Von Ellen, LLC, located in Springfield. She devotes her practice exclusively to family law. In addition to issues relating to divorce, alimony, child support, equitable distribution of assets, custody/parenting, relocation, and post-judgment matters, Emerald has unique experience with disputes involving the custody and time sharing of family pets. She takes an empathetic approach to lawyering and believes that zealous advocacy for her clients, along with finding creative solutions to the problems they face, comes from a client-centered approach.



For those who have lost a pet, it should come as no surprise that research shows the grief associated with the loss of a dog is equivalent to the loss of a human loved one.<sup>1</sup> Clients who seek legal advice after the traumatic death of a pet at the hands of another typically picture their damages and injuries primarily in the form of intense grief and pain. It can be a shock to hear that such a claim is not allowed in many types of cases. However, while many lawyers may assume that animals, still labeled as property in all 50 states, have *no* possibility of the recovery of emotional distress damages, that is an oversimplification of the current case law. As case law continues to define the value of our companion animals, the answer to the question of emotional distress damages is no longer a black and white issue.

### General Damages

The Appellate Division has had several opportunities to evaluate the value of a companion animal. For instance, in *Houseman v. Dare* the Appellate Division recognized the “special subjective value” pets bring their owners, and remanded a decision giving possession of a dog in dispute to the defendant in exchange for \$1,500 in compensation to the plaintiff.<sup>2</sup> In a more detailed analysis of damages, the court in *Hyland v. Borrás* held that the value pets bring to their owners “arises purely as the result of their relationship and the length and strength of the owner’s attachment to the animal.”<sup>3</sup> For this reason, the court affirmed an award of damages in excess of the dog’s market value of \$500.<sup>4</sup>

Still, what was the award in *Hyland* to the owner of a 10-year-old Shih Tzu who witnessed the defendant’s dog viciously attack and injure her beloved dog in front of her? A mere \$2,500, which the trial court held would “‘compensate [her] for the loss [and] return [her] to the same position, monetarily,’ that she was in before the attack.”<sup>5</sup> Nonetheless, the Appellate Division made clear the question of damages for emotional distress was not before them, and the court did not address non-economic damages in its analysis.<sup>6</sup> Overall, this case law tells us that replacement value may be the baseline for damages but it is not the ceiling.

### Negligent Infliction of Emotional Distress Claims

As a general rule in New Jersey, the *Portee* doctrine applies in negligent infliction of emotional distress claims (NIED) for plaintiffs who are seeking damages from watching the traumatic death of another.<sup>7</sup> However, these claims require a familial relationship or intimate, marital-like bond with the victim. Due in part to the difficulty in assessing this bond with non-human victims, the Superior Court in *Harabes v. Barkery, Inc.*, flatly rejected any claims for NIED stemming from the loss of a pet dog that died at the groomers due to extreme heat.<sup>8</sup> Citing public policy issues, the court asked a series of questions designed to show the inability of the courts to sort through these claims, making them unfeasible. These questions included defining who counts as the human companion, what class of animals is covered, and how to quantify the emotional value of a companion pet.<sup>9</sup> Ultimately, a review of the case via eCourts shows that the groomer defaulted and the plaintiffs were awarded a total judgement of \$2,850.58.

Just one year later, in *McDougall v. Lamm*, the New Jersey Supreme Court agreed with the analysis in *Harabes* in declining to expand the *Portee* doctrine to pet owners who witnessed their animal being killed.<sup>10</sup> The trial court had dismissed the emotional distress claim

brought by the plaintiff because the death of the plaintiff’s “maltipoo”—who was shaken to death by the defendant’s dog in front of the plaintiff—was solely a loss of property.<sup>11</sup> The Supreme Court affirmed the trial court’s award to the plaintiff of \$5,000 in compensatory damages, which did not limit the damages solely to replacement costs, because the trial judge took into consideration the training and tricks the dog could perform.<sup>12</sup> Once again, the key to the Court’s decision hinged on the historical principle that pets are property, with public policy concerns regarding the boundaries of an emotional distress cause of action for these claims. Still, the ultimate amount awarded exceeded the mere market value of the dog.

Such decisions miss an important fact: the suffering of the animal. Unlike the destruction or damage to mere property, such as a painting or jewelry, the owner of the animal must witness their “property” experience fear and pain. Further, there remains no cause of action based solely on the suffering of the animal itself. All causes of action for NIED remain based strictly anthropomorphic: they only consider the suffering of the human owner, and there is no consideration of an award to the animal based on their own pain. In this way, the suffering of the animal is entirely ignored by the court system in these claims. An expan-



sion of the NIED claim which included the suffering of the animal as a cause for damages would address this unreasoned approach and may also deter harm to animals by providing an avenue for justice outside of the criminal animal cruelty context.

### Open Doors

While some of these cases have not failed, not all doors are shut on emotional damages. A new but unpublished decision, *Quesada v. Compassion First Pet Hospitals*, points to where there is wiggle room for additional damages. Therein, a veterinarian decapitated a deceased cat to perform a rabies test, prior to returning the animal's body in this shocking condition to the plaintiff.<sup>13</sup> The plaintiff asserted *direct* NIED, but the trial court applied the *bystander* NIED standard and dismissed her claim.<sup>14</sup> On appeal, the Appellate Division reversed and remanded: the court agreed with the plaintiff that this series of events was a direct NIED claim because the cat was already deceased when the wrong occurred, and therefore distinguishable from *McDougall*.<sup>15</sup> The plaintiff's emotional distress damage claim was allowed to proceed. In sum, direct NIED claims for pet deaths have the green light from the Appellate Division.

Additionally, the question of intentional infliction of emotional distress (IIED) remains unanswered by the current case law. *Harabes* pointed out that "some states allow damages for intentional infliction of emotional distress if the conduct resulting in injury to or death of a pet is either intentional, willful, malicious, or reckless," including Florida, Kentucky, and Idaho as a few examples.<sup>16</sup> Nonetheless, that was not a claim asserted by the plaintiffs in that case, so the court did not address same. However, it is not difficult to imagine a scenario where an individual could harm the animal of another on purpose. As one example, there is a correlation between domestic violence and animal abuse wherein the

animal abuse itself is used to perpetrate control over the victim.<sup>17</sup> If a plaintiff asserts an individual willfully injured or killed their pet, a claim for IIED damages is not barred by case law. That said, the amount in damages that could potentially be awarded by the court—or a jury—is mere speculation.

### Divorce Context

Claims for IIED in the divorce realm pose additional interesting questions. Tort claims between two married persons are handled in the divorce proceedings by way of asserting a *Tevis* claim. Pursuant to *Tevis v. Tevis*, a spouse can seek damages for "any intentional tort by which one spouse victimizes the other."<sup>18</sup> The injuries can be in the form of physical or emotional abuse, may include claims for both compensatory and punitive damages.<sup>19</sup> If the domestic abuse in such a situation extended to the couple's pets, a *Tevis* claim could result in much more substantial damages than in any other context described above. Importantly, such a claim would need to be asserted in the pleadings to avoid being waived. Matrimonial attorneys faced with potential animal cruelty from an abusive spouse should consider whether a *Tevis* claim would be appropriate to assert in light of the case's unique circumstances. To date, no decision discusses such a claim brought in the divorce context.

### Conclusion

Emotional distress damages as they relate to pets is a complicated area of law that balances varying competing interests. This area of law continues to develop, and it is likely that as the human-companion animal relationship continues to expand, so will lawsuits over their wrongful injuries. Attorneys faced with calls from prospective wrongful pet death clients should continue to monitor the case law on these issues, or better yet, continue to challenge and make new law that

better exemplifies the deep love, affection, and attachment humans share with their pets. ■

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7. *Portee v. Jaffee*, 84 N.J. 88 (1980).
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9. *Id.*
10. *McDougall v. Lamm*, 211 N.J. 203, 227 (N.J. 2012).
11. *Id.* at 210.
12. *Id.* Placing value on the "tricks" a dog can perform poses an interesting question in the realm of service animals. If a person sought damages for the death of a service dog who was trained to assist them with tasks, it is difficult to imagine how such training would be quantified by the Court.
13. *Quesada v. Compassion First Pet Hospitals*, 2021 WL 1235136 at 2 (App. Div. 2021).
14. *Id.* at 3.
15. *Id.* at 5.
16. *Harabes, supra*, at 371.
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19. *Merrimack Mut. Fire Ins. Co. v. Coppola*, 299 N.J. Super. 219, 222 (App. Div. 1997).



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# TAILS OF DISASTER PREPAREDNESS

## A Case Study of the PETS Act

By Jacob (Jake) V. Hudnut



Seventy percent of American households own at least one pet and, in New Jersey, no less than half of households have pets.<sup>1</sup> It should come as no surprise then, that the relationship between pets and their owners bears discussion when considering what the law requires of communities when preparing for, responding to, and recovering from disasters. This became increasingly apparent during a series of disasters in the 1990s. When Hurricane Andrew devastated southern Florida in 1992, one thousand displaced dogs and cats were euthanized simply for insufficient sheltering capacity after evacuation orders instructed that pets be left behind.<sup>2</sup> When a tornado struck Indiana in 1994, one community's evacuees showed signs of psychological distress and medically unexplained physical symptoms from uncertainty over the whereabouts and welfare of lost pets.<sup>3</sup> Following, a major train derailment in Wisconsin in 1996, the National Guard struggled as many evacuated pet owners defiantly attempted to return to their abandoned homes in unsecured areas to check on their pets.<sup>4</sup>

Fortunately, federal law now requires states and communities receiving funds from the Federal Emergency Management Agency (FEMA) to make pre-disaster plans specifically for pets and their owners. The Pet Evacuation & Transportation Standards (PETS) Act was passed in 2006 with bipartisan support. But it took the country's most expensive and destructive natural disaster to force this issue into the public's consciousness and compel lawmakers to finally act.

### Hurricane Katrina

Hurricane Katrina reached New Orleans on Aug. 29, 2005. It breached levees, flooded the region, killed as many as 1,300 people, displaced 770,000 more,

and caused at least one hundred billion dollars in economic damage.<sup>5</sup> It has been deemed the costliest and most destruc-

**[F]ederal law now requires states and communities receiving funds from the Federal Emergency Management Agency (FEMA) to make pre-disaster plans specifically for pets and their owners. The Pet Evacuation & Transportation Standards (PETS) Act was passed in 2006 with bipartisan support. But it took the country's most expensive and destructive natural disaster to force this issue into the public's consciousness and compel lawmakers to finally act.**

tive natural disaster in United States history. It is also the turning point for the treatment of companion animals within disaster management. The scenes of displaced animals during recovery, as well as tales of hostility from authorities toward pets and their owners, pushed the issue

forward in a way that no disaster had to date.

As Katrina approached Louisiana with 28-foot storm surges anticipated, the National Hurricane Service warned: "Persons...pets...and livestock exposed to the winds will face certain death if struck."<sup>6</sup> It was predicted the city would be flooded and uninhabitable for weeks. Unfortunately, evacuation plans included no options for bringing pets for those without personal transportation. It has been estimated that 44% of those who ignored evacuation orders did so to remain with their pets.<sup>7</sup> These individuals risked death rather than leave their pets.

Others evacuated without their pets. Many left pets tethered to posts in their yards, exposed to high winds and flood waters, while others left pets indoors with limited amounts of food and water. In total, an estimated 100,000 to 250,000 pets were left behind in New Orleans.<sup>8</sup> A conservative estimate is that 70,000 of those animals died.<sup>9</sup> A Congressional report concluded that approximately 600,000 companion animals in the greater Gulf Coast region died or were left stranded.<sup>10</sup>



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Certainly, some instances of abandonment can be attributed to a lower standard of pet care. But from the earliest days following the storm, accounts from the area painted a picture of a systemic problem. Conditions against pets and pet owners were outright hostile. Abandonment was forced upon most pet owners.

Helicopter pilots and rescue boat operators refused pets.<sup>11</sup> Police and National Guardsmen ordered abandonment at gunpoint.<sup>12</sup> When evacuees at the Superdome were loaded onto buses to be moved to other locations, thousands of animals were left behind in the parking lot as ordered by armed Guardsman.<sup>13</sup> Across the city, many evacuees were lied to and told any pets surrendered would be sheltered safely and reunited with them later.<sup>14</sup> But most of those animals were unsheltered and abandoned by officials. After the storm, animal control officers and police shot stray pets rather than capture them, particularly in the city's poorer neighborhoods. Two police officers would be charged with animal cruelty, but their charges were dropped when a new state attorney general was elected.<sup>15</sup>

### The PETS Act

Many failures precipitated by Hurricane Katrina were beyond the quandary of pets and their owners, and President George W. Bush ordered a review of the federal government's response to the disaster. The report called for evacuation plans that track and coordinate movements of "evacuees, *evacuating pets*, unaccompanied minors, the elderly and... people who lack the means to leave voluntarily."<sup>16</sup> The federal government was effectively tasked with legislating a culture of pre-disaster planning for pets and their owners.

In October of 2006, Congress passed the PETS Act in bipartisan votes. The primary function of the PETS Act is a reimbursement mechanism for non-profit and private companies and state and

local governments for work done evacuating and rescuing animals during a disaster.<sup>17</sup> It is now more likely than not that during an evacuation, one will find a shelter nearby that permits pets. The act

**It is now more likely than not that during an evacuation, one will find a shelter nearby that permits pets. The act also allows FEMA to provide funding to state and local governments to create and operate pet-friendly emergency shelters. Finally, states receiving any FEMA funding must have evacuation plans for pets.**

also allows FEMA to provide funding to state and local governments to create and operate pet-friendly emergency shelters. Finally, states receiving any FEMA funding must have evacuation plans for pets.

The PETS Act's efficacy was tested in 2007 during intense Southern California wildfires. Open spaces next to evacuation shelters were staged for pet kennels with onsite veterinarians.<sup>18</sup> FEMA declared the response a success, boasting that "keeping pets and people together in the face of disaster can be done."<sup>19</sup>

Subsequently in 2008, Hurricane Gustav gave the New Orleans area occasion to implement similar operations. Pet-owning evacuees without personal transportation were directed to specific ren-

dezvous points.<sup>20</sup> People rode in buses while their pets followed in trucks to dedicated evacuation points.

When a massive "1,000-year" flood affected Colorado in 2013, the National Guard demonstrated how far it had come since Katrina when it adopted the motto, "no pets left behind."<sup>21</sup> Pets were evacuated by helicopter, boat, and even zip line before being reunited with their owners.

The first Katrina-scale test of the PETS Act came in the summer of 2017 when Hurricane Harvey pummeled Houston. A major effort to empty area shelters was a success, and the U.S. military was praised for its response in assisting.<sup>22</sup> Prior to landfall, Texas officials emphasized the illegality of tethering dogs outside in extreme weather, promising prosecution of violators.

However, the PETS Act has not been spared criticism. It does not prohibit discrimination against certain breeds, including pit bull-type dogs.<sup>23</sup> Over 30 states have some type of breed-specific ban or restriction enacted. Many court challenges to these laws have failed. As a result, many shelters in these jurisdictions believe they can enforce these restrictions during admission to shelters during disasters and often do.

Some argue the PETS Act's definition of covered animals is too narrow since it is limited only to dogs, cats, birds, rabbits, rodents, and turtles.<sup>24</sup> Reptiles, fish, amphibians, farmed animals, horses, and other nontraditional pets are excluded. This has a disparate impact on rural communities and their livestock. For example, when Hurricane Florence hit South Carolina in 2018, an estimated 3.5 million chickens, pigs, cows, and other farmed animals were left behind, many in cages, following evacuations.<sup>25</sup> Most of these animals died.

There have even been reports of widespread misunderstandings of the PETS Act's mandates during disasters. During Hurricane Irma in 2017, evacuees presented at hotels and motels believing fed-

eral law required the establishment to accommodate their pets.<sup>26</sup> The PETS Act includes no such mandate on private accommodations. While a service animal must be accepted under the Americans with Disabilities Act, other pets, even those designated as emotional support animals, enjoy no such protection.

## The Future

There is now universal agreement that the needs of pets and their owners have a place in disaster management and that failing to recognize this adversely affects a community's disaster recovery and resilience. But some argue the lessons of Hurricane Katrina—learned and implemented by the PETS Acts—are just a beginning. Sociology professor and animal advocate Leslie Irvine argues in *Filling the Ark: Animal Welfare in Disasters* that addressing the impact of disasters on non-companion animals is the future of this conversation. A wider universe of animals must be considered in pre-disaster planning. Irvine points to the devastation Hurricane Katrina had on non-companion animals. Millions of farm animals, including eight million chickens in just one producer's facility, lost their lives.<sup>27</sup> At the laboratories of Louisiana State University, eight thousand animals used in research died.<sup>28</sup> Ten thousand fish suffocated when the Aquarium of the Americas lost power during the storm.<sup>29</sup>

The scale of this devastation on non-companion animals is not aberrational. As discussed above, Hurricane Florence decimated livestock, drowning mills of chickens. In 2012, when Superstorm Sandy's surge covered Manhattan, seven thousand cages of mice were submerged at New York University's laboratories.<sup>30</sup> Hurricane Rita killed 30,000 cattle in 2005.<sup>31</sup> There is an obvious humanitarian component to these incidents, but these losses also speak to recovery and resiliency. There are considerable economic components to these losses. It can take

years for animal stock and reproduction rates to recover and return to pre-disaster levels.<sup>32</sup>

Both disaster managers and lawmakers must recognize that these losses affect our disaster recovery and resiliency. New laws surrounding pre-disaster planning must take responsibility for the welfare of these non-companion animals. Such a change will be difficult, if not radical, but it will be equally worth it. There is always a benefit to expanding the capacity to handle the threats and risks facing a community. Meeting new challenges is at the heart of both disaster management and good lawmaking. ■

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13. *Supra* note 12 at 156; *Supra* 4 J. Animal L. & Ethics at 140.
14. *Supra* note 1 at 24; *Supra* note 12 at 156.
15. *Supra* note 1 at 25.
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17. 42 U.S.C. 5170b, 5196 and 5196b
18. 4 J. Animal L. & Ethics at 153.
19. *Id.*
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21. *Supra* note 1 at viii.
22. Glassey, Steve (2018). "Did Harvey Learn from Katrina? Initial Observations of the Response to Companion Animals During Hurricane Harvey." *Animals*, 8(4) at 3–4.
23. *Supra* 32 Seton Hall Legis. J. at 354.
24. *Supra* 40 Mitchell Hamline L.J. Pub. Pol'y & Prac. at 88.
25. *Id.* at 93.
26. *Id.* at 76.
27. *Supra* note 1 at 2-3.
28. *Id.*
29. *Id.* at 124.
30. *Id.* at ix.
31. *Id.* at 124.
32. *Supra* 40 Mitchell Hamline L.J. Pub. Pol'y & Prac. at 93





# Is It Time to Move Animal Cruelty Laws From Title 4, Agriculture and Domestic Animals, into Title 2C, the Code of Criminal Justice?

By Olivia Belfatto Crisp

**M**ahatma Gandhi stated, “[t]he greatness of a nation and its moral progress can be judged by the way its animals are treated.” Espousing a philosophy of non-violence toward all living creatures, Gandhi was an early proponent of the humane treatment of animals and the obligation of a society to protect them from harm. As the 19th century falls further from the sight of our rear-view mirror, society’s laws have begun progressing toward that ideal.

In 1880, when New Jersey was primarily an agrarian society, animals were used for commercial purposes such as farming, transportation, and as beasts of burden.<sup>1</sup> Animals were considered property, and owners could treat them in any manner they saw fit without regard to the animal's suffering.<sup>2</sup> Henry Bergh, founder of the American Society for the Prevention of Cruelty to Animals (ASPCA) in New York, raised awareness of the maltreatment of animals through legislative initiatives.<sup>3</sup> With a gradual recognition of the need for owners to treat their animals humanely, a movement began throughout the country to enact laws to penalize such cruelty.<sup>4</sup> In the late 19th century, the New Jersey Legislature enacted a comprehensive statutory scheme which proscribed civil and criminal penalties for people who committed acts of animal abuse and neglect.<sup>5</sup>

Animal cruelty laws are governed by Title 4, with crimes against animals ranging from a disorderly persons offense to a third-degree crime.<sup>6</sup> On July 22, 2004, Gov. James McGreevey signed an executive order creating the Animal Welfare Task Force.<sup>7</sup> One of its missions was to examine the current practices and to make recommendations to "protect the State's animals from inhumane treatment [and] improve the enforcement of anti-cruelty laws."<sup>8</sup> Despite the issuance of a 140-page report with appendices,<sup>9</sup> New Jersey has made little progress in upgrading the animal cruelty laws, appointing and training law enforcement officers, vigorously prosecuting cases, and imposing strict penalties for violators since the report was issued almost 20 years ago.

One of the recommendations of the task force was to move animal cruelty offenses from Title 4, Agriculture and Domestic Animals, to Title 2C, the New Jersey Code of Criminal Justice.<sup>10</sup> With the exception of dog fighting, N.J.S.A.

2C:33-31, and leader of a dog fighting network, N.J.S.A. 2C:33-32, no other crimes against animals have been incorporated into Title 2C.<sup>11</sup> Periodic amendments to Title 4 have resulted in a patchwork of confusing, archaic, and ineffective laws to combat the widespread problem of animal maltreatment and the prosecution and punishment of offenders. Moreover, there is a paucity of case law and reported decisions interpreting the cruelty statutes, resulting in a lack of precedents to guide courts in handling these cases.

### The Evolution of the Laws

A brief history of animal cruelty laws in New Jersey is enlightening. In 1880, it was illegal to "overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, or unnecessarily or cruelly beat or otherwise abuse, or needlessly mutilate or kill" any living animal or creature.<sup>12</sup> In addition to prohibiting abuse, the original law provided that it was illegal for an owner to neglect the animal by "unnecessarily fail[ing] to provide the same with proper food, drink, shelter, or protection from the weather."<sup>13</sup> This law was a misdemeanor until 1996, when it was classified as a disorderly persons offense to achieve consistency with the New Jersey Criminal Code.<sup>14</sup>

In 2001, N.J.S.A. 4:22-17c and d were amended to elevate certain animal cruelty offenses to a fourth-degree crime.<sup>15</sup> It became unlawful to "purposely, knowingly, or recklessly: 1) torment, torture, maim, hang, unnecessarily or cruelly beat, cruelly abuse, or needlessly mutilate a living animal or creature" or to cause such acts to be done. This amendment adopted the language of Title 2C, requiring the offender to act "purposely, knowingly or recklessly." The lawmakers retained the original language of N.J.S.A. 4:22-17a providing that it was unlawful

to "overdrive, overload, drive when overloaded, overwork..." an animal so that both the original language and subsequent amendment co-existed in the same statute.<sup>16</sup> In January 2004, the "poison[ing]" of an animal became a fourth-degree offense and certain acts of cruelty were upgraded to a third-degree crime if the animal died or the offender had a prior conviction for animal abuse.<sup>17</sup>

In 2018, the Legislature repealed the law which conferred authority on the New Jersey Society for the Prevention of Animals (NJSPCA) in response to growing criticisms of the organization's practices.<sup>18</sup> The prior law was replaced by N.J.S.A. 4:22-14.2 which provides for the appointment of a Humane Law Enforcement Officers (HLEO) in each municipality to investigate and enforce animal cruelty violations in its jurisdiction.<sup>19</sup> The HLEO would then report to the county prosecutor for appropriate actions.<sup>20</sup>

### Task Force Recommendations

The Legislature's transference of power to enforce animal cruelty law through the appointment of HLEOs is a step in the right direction. It does not



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One of most compelling reasons for moving animal cruelty offenses into Title 2C is in sentencing offenders....A revised statutory scheme would increase the grading of animal cruelty violations to first-, second-, third-, and fourth-degree crimes depending upon whether the harm to the animal is severe or the conduct is especially egregious. In upgrading the offenses, perpetrators of abuse would be tried in Superior Court and subjected to stiffer sentences, including imprisonment.

remedy the fact that the existing criminal laws under Title 4 are difficult to interpret and prosecute. The 2004 task force made recommendations designed to improve the protection of animals and prohibit inhumane treatment. It proposed the drafting of new legislation to create “a unified statutory framework that more closely resembles the State’s traditional law formulation.”<sup>21</sup>

One of the task force’s chief recommendations was to move animal cruelty offenses from Title 4 to Title 2C, providing a number of reasons for this proposal.<sup>22</sup> Preliminarily, it noted that due to inadequate training, law enforcement officers might be unfamiliar with Title 4 offenses. Because the animal cruelty laws are not governed by Title 2C, police and prosecutors may deem existing animal cruelty crimes less important. The task force noted that updating the terminology to be consistent with the Criminal Code may result in increased prosecution of offenders.<sup>23</sup>

The task force submitted a proposed draft of the revised animal cruelty laws under Title 2C which it attached to the Appendix of the Report and designated “Appendix A.”<sup>24</sup> The new law created nine distinct sections: Definitions, Animal Abuse, Aggravated Animal Abuse, Animal Abandonment, Animal Neglect, Animal Fighting,<sup>25</sup> Overworking an Animal, Duty to Report Animal Abuse, and Exceptions.<sup>26</sup> It further recommended

the repeal or consolidation into 2C of other Title 4 violations deemed disorderly persons offenses, such as selling horses as unfit for work or using live birds as targets.<sup>27</sup> The task force suggested that the civil offenses contained in Title 4 should be amended to mirror revisions to the criminal laws.

One of most compelling reasons for moving animal cruelty offenses into Title 2C is in sentencing offenders. According to the task force’s conclusions, the majority of cases are handled in municipal court, where the penalties are “comparatively low.”<sup>28</sup> A revised statutory scheme would increase the grading of animal cruelty violations to first-, second-, third-, and fourth-degree crimes depending upon whether the harm to the animal is severe or the conduct is especially egregious. In upgrading the offenses, perpetrators of abuse would be tried in Superior Court and subjected to stiffer sentences, including imprisonment. In addition, a court may impose forfeiture, mandatory counseling, and restrictions on future possession of animals.<sup>29</sup>

### Impact on Updating the Laws

Finally, there are further benefits to the incorporation of animal cruelty offenses into Title 2C. Enhanced training of law enforcement would increase public awareness and the need to report acts of animal cruelty. Recognition that persons who commit acts of animal mal-

treatment will be punished harshly may create a deterrent effect. Acts of animal abuse committed in conjunction with other crimes might not be easily downgraded or dismissed as part of plea negotiations. Prosecutors would be called upon to vigorously oppose a defendant’s admission into pre-trial intervention in the most serious cases.<sup>30</sup> At sentencing, owners would be encouraged to provide victim impact statements to inform the judge of their suffering as the result of the loss of their companion animal.<sup>31</sup> Importantly, perpetrators of animal cruelty could be identified early to encourage swift punishment or rehabilitation; it is well established that animal abuse by young offenders is a precursor to future forms of violent behavior.<sup>32</sup> Finally, criminal and civil statutes would be segregated into two distinct statutory schemes, with animal offenses governed by Title 2C and civil offenses remaining in Title 4.

Not everyone is in favor of reform. Special interest groups, such as the agricultural industry, farmers, and pharmaceutical companies, have opposed efforts to strengthen laws against animal cruelty. Agricultural lobbies have fought against the extension of rights for non-farm animals, concerned they could become a model for further reforms resulting in limits on agricultural practices.<sup>33</sup> Farming is a multi-billion-dollar industry, and tension exists between the

profit motive and the humane treatment of animals raised for food consumption.<sup>34</sup> Similarly, drug companies urge that cruelty laws do not apply to animals used in research on the basis that this testing is necessary for the advancement of medicine and science. As the result of lobbying efforts by special interest groups, exceptions to the cruelty statutes have been carved into the statutory scheme, including the raising and care of domestic livestock and the treatment of those animals used for properly conducted scientific experiments.<sup>35</sup>

Existing legislation, contained in Title 4 Agriculture and Domestic Animals, is a patchwork of laws periodically amended, which are in urgent need of overhauling and reform if New Jersey is to address the findings issued by the special task force on animal cruelty it created nearly 20 years ago. Moreover, there has been an increasing awareness of the connection between cruelty toward animals and violence toward people, especially in the realm of domestic violence where the offender is likely to target companion animals to manipulate and control vulnerable people in the home. New Jersey can join other states' standards of living for animals by enacting strict laws governed by the Code of Criminal Justice which are designed to vigorously investigate and prosecute crimes against animals. ■

## Endnotes

1. *Animal Welfare Task Force Report*, 1, 7 (2004) ("Task Force Report").
2. Francione, *Animals, Property, and Legal Welfarism: "Unnecessary" Suffering and the "Humane" Treatment of Animals*, 46 Rutgers L. Rev. 721, 731-732 (1994); *Cf.*, *State v. Beekman*, 27 N.J.L. 124 (1858).
3. Iannacone, *Felony Animal Cruelty Laws in New York*, 31 Pace L. Rev. 748, 751 (2011).
4. Favre and Tsang, *The Development of Anti-Cruelty Laws During the 1800s*, 1993 Det. C.L. Rev. 1 (1993).
5. Prevention of Cruelty to Animals Act ("PCAA"), P.L. 1880, c. 157 sec. 20.
6. N.J.S.A. 4:22-14.1 to 4:22-61.
7. Task Force Report at i-iii.
8. *Id.* at i.
9. The humane treatment of domestic livestock, or farm animals raised primarily for food consumption, is a separate issue not addressed by the Task Force. According to N.J.S.A. 4:22-16e, an exception exists for domestic livestock, which is regulated by rules and regulations promulgated by the Department of Agriculture. N.J.S.A. 4:16.1. Task Force Report at 23.
10. Task Force Report at 16.
11. The broader prohibition against animal fighting remains governed by Title 4. N.J.S.A. 4:22-24.
12. P.L. 1880, c. 157 sec. 20.
13. *Id.*
14. L. 1996, c. 64 sec. 1 eff. July 12, 1996; Task Force Report at 8 -10.
15. Task Force Report at 10; P.L. 2001, c. 229 sec. 1.
16. N.J.S.A. 4:22-17a, c; Task Force Report at 11.
17. N.J.S.A. 4:22-17b and c.
18. State of New Jersey Commission of Investigation, *Wolves in Sheep's Clothing: New Jersey's SPCAs 17 Years Later* (2017); *Goldman v. Critter Control of N.J.*, 454 N.J. Super. 418, 426 (App. Div. 2018).
19. L. 2017 c. 331 sec. 226 (eff. May 1, 2018); *Goldman* at 426.
20. N.J.S.A. 22-14.2c(3).
21. Task Force Report at 7.
22. *Id.* at 16.
23. *Id.* at 16 -17.
24. Task Force Report at 17-18, Appendix A.
25. As previously noted, dog fighting has been incorporated into Title 2C. N.J.S.A. 2C: 33-31.
26. Task Force Report at 17-20.
27. N.J.S.A. 4:22- 21; 4:22-23; Task Force Report at 24.
28. *Id.* at 24. *See, e.g., State v. Spano*, 328 N.J. Super. 287, 289 (App. Div. 2000) (defendant was convicted of "needlessly killing" two dogs in violation of N.J.S.A. 4:22-17a and sentenced to a fine of \$500, a 15-day suspended county jail term, and thirty days of community service).
29. Task Force Report at 24-26.
30. *See, e.g., In re Interest of P.H.*, 436 N.J. Super. 427, 432-433 (App. Div. 2014).
31. N.J.S.A. 2C:44-6.
32. Task Force Report at 57-62.
33. Lutz and Lutz, *Interest Groups and Pro-Animal Rights Legislation*, Society & Animals 19 (2011) 261-267.
34. Wolfson, *Beyond the Law, Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 Animal L. 123 (1996).
35. N.J.S.A. 4:22-16a,e; Task Force Report at 23.





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# Remedies Under New Jersey Law to Help Avert the Extinction Crisis

By Paul Tartanella and Kathleen Applegate

When we think of the world's most iconic animals many of us imagine leopards, rhinos, gorillas, orangutans, tigers or porpoises. These are the animals that fill our fables and myths; these are the stuffed animals that we collect as children. They are the animals that fill the story books we read to our children to capture the beauty and majesty of the world. They are also the animals on the World Wildlife Fund's list of the world's most endangered animals of 2023.<sup>1</sup>

These animals are just a fraction of the animals that face extinction today. Scientists believe that we are entered the sixth period of mass extinction, the first one to occur in 65 million years.<sup>2</sup> Scientists also have found that the rate of extinction is accelerating. One million species are threatened with extinction, including more than 40% of amphibian species, almost 33% of reef-forming corals and more than a third of all marine animals are threatened.<sup>3</sup> As more species disappear, the threat to our ecosystem and our survival also increases.

E.O. Wilson used an acronym to explain these causes in descending order of impact—**HIPPO**—standing for **H**abitat loss, including that caused by human-induced climate change, **I**nvasive species, **P**ollution, **P**human overpopulation—a root cause of the other four factors, and **O**verharvesting (hunting, fishing, gathering).<sup>4</sup>

While this problem requires global solutions and cooperation, there are certain legal actions and remedies under New Jersey law that can help to some degree. This article discusses four potential legal remedies.

## Potential Legal Remedies

### 1. Land Trusts for Animals

The principal threat to wildlife is the loss of the habitat where they live. In *Wildlife as Property Owners* (2020), Karen Bradshaw advances one possible remedy; the creation of trusts that allow owners to leave their property to wildlife through trusts. A trust could be established while the grantors are alive or after their death.

This approach has advantages. First, there are existing similar legal structures in place. Currently, New Jersey allows the creation of a trust fund to care for animals named in the trust.<sup>5</sup> This concept could be extended beyond particular ani-

mals to an ecosystem on a designated property. Another advantage of this approach is that there are well-established bodies of law concerning trusts and real property. Additionally, these “nature trusts” are not dependent upon governmental approvals and rely on the established property rights of owners to do what they choose to with their property. Further, this structure would allow the grantor of the trust to appoint persons with enforcement powers, as is allowed currently with pet trusts.<sup>6</sup> This avoids the problem of the lack of standing that prevents lawsuits on behalf of animals in most instances.

### 2. Rights of Nature

Another possible remedy to prevent habitat destruction is to grant ecosystems the right to exist without harm. This legal principle is commonly referred to as the “rights of nature.” Rights of nature can protect entire ecosystems, as in Ecuador<sup>7</sup> or specific natural features, such as rivers, as in New Zealand.<sup>8</sup>

A leading case in the United States is *Drewes Farms Partnership v. City of Toledo*<sup>9</sup> 441 F. Supp. 3d. 551 (N.D. Ohio Feb. 27, 2020). In August 2014, the residents of Toledo, Ohio, were told they could not drink the city water because it contained unsafe levels of a toxic substance due to pollution in Lake Erie.<sup>10</sup> In response, the citizens of Toledo voted to enact the Lake Erie Bill of Rights (LEBOR) as an amendment to the Toledo City Charter.<sup>11</sup> The law provided that Lake Erie had the right “to exist, flourish, and naturally evolve” and allowed residents of Toledo to file lawsuits on the lake’s behalf.<sup>12</sup> The U.S. Circuit Court in the 6th Circuit found the law violated the Fourteenth Amendment of the United States Constitution as certain sections of the law were deemed too vague and that the law exceeded the power of a municipality to contravene Ohio law.<sup>13</sup>

There are still possible avenues to enforcing rights of nature actions. In striking the law in *Drewes* down, the judge did state, “[w]ith careful drafting, Toledo probably could enact valid legislation to reduce water pollution.”<sup>14</sup> In fact, communities in Pennsylvania, California, and New Hampshire have drafted ordinances to protect nature.<sup>15</sup>

These actions may have particular viability in areas with significant indigenous communities. Indigenous communities often perceive nature as a member of their community.<sup>16</sup> These communities often have access to tribal courts where the courts more closely represent their views on nature.<sup>17</sup> For example, through a lawsuit filed by the White Earth Nation of Ojibwe in Minnesota, *manoomin*, a type of wild rice was granted the right to “exist, flourish and multiply.”<sup>18</sup> And in April 2023, the city of Seattle settled a case brought by the Sauk-Suiattle Indian Tribe and agreed that salmon had the right to pass through the city’s dams.<sup>19</sup> The agreement recognized Seattle will now introduce a program to comply.<sup>20</sup>

### 3. Modification of business structures

Most of the activities that impact biodiversity are done by corporations and other business entities. Laws can encourage companies to act more responsibly. New Jersey has done this in part by the creation of the benefit corporation, a corporation that is required to have a general public benefit as its purpose.<sup>21</sup> New Jersey law also provides that a director may, in addition to considering the effects of any action on shareholders, consider the effects of the action on the corporation’s employees, suppliers, creditors and customers and the effects of the action on the community in which the corporation operates.<sup>22</sup> The law could better protect the environment if the law specified that a director could consider



the impact on the environment and the animals that comprise the natural world.

As a state can make it easier for corporate employees to act more responsibly, a state can modify corporate structures to discourage corporate misconduct, at least for the most egregious of the bad actors.<sup>23</sup> An important feature of the corporation is its limited liability, meaning that creditors of the corporation cannot reach the assets of its shareholders.<sup>24</sup> A statutory solution could be to amend the corporate law and remove limited liability for intentional harm to habitats or allowing claims against profits paid to employees or dividends to shareholders for the cost of environmental damage.

Katharina Pistor is a Professor of Law at Columbia University who writes extensively on how contract law, property rights, collateral law and trust, corporate and bankruptcy law aid in the creation of corporate wealth.<sup>25</sup> Pistor maintains that shareholders that continue to invest in companies that are destroying the environment do not deserve limited liability:

If you consciously and intentionally invest in something that we know is destroying the living conditions for humans—the planet will survive without us. That's not the issue. The question is whether we will survive on this planet.... If you knowingly destroy the conditions for us to survive on this planet in order to make short-term profit, I'm not sure why we should give you a limited liability.<sup>26</sup>

This result may also be obtained under existing common law principles, albeit with a greater awareness of the rationale for certain intercompany structures. Under New Jersey law, a party may pierce the corporate veil and impose liability on corporate principals where they misused the corporate entity “to perpetrate fraud, to accomplish a crime, or

otherwise to evade the law.”<sup>27</sup> State, Dept. of Environ. Prot., 94 N.J. 473 at 500. (1983). In that case, the New Jersey Supreme Court declined to apply the common law doctrine to hold the parent corporation liable for the damages from the pollution caused by its subsidiaries on the basis that the subsidiary was established for a valid business purpose.<sup>28</sup> This evaluation of a “valid” business purpose should include a consideration of the entire corporate structure. At least one commentator has observed that the use of multiple subsidiaries with very discreet objectives often indicate an awareness of potential harm to the environment and a reliance on limited liability to externalize the resulting costs:

Research has shown, for example, that firms using hazardous materials have tended to remain small or restructure themselves in such a manner as to create a large number of subsidiaries. This is indicative of an increased awareness of the likelihood that their operations will damage the environment, and accordingly, their reliance on limited liability to offset the costs of damages that could otherwise outweigh returns. Similarly, it has been discovered that the imposition of strict liability laws on parent companies alone has led to polluting firms restructuring themselves into smaller subsidiaries, resulting in an increased frequency of spillages. It is therefore apparent that the externalisation of harm which limited liability encourages internalises harm to the environment....<sup>29</sup>

#### **4. Legal Representation for Wild Animals**

Wildlife would be better protected if it had representation in court. One legislative model may be *ad litem* laws that allow the court to appoint lawyers to advocate for the interests of wildlife. For example, under Desmond's Law<sup>30</sup> in Con-

necticut the court can appoint law students or volunteer lawyers to advocate for the interests of an animal in cruelty cases. There is a bill in the New Jersey Legislature that would adopt a similar law in the state.<sup>31</sup> Using this *ad litem* concept, the court can appoint an environmental or wildlife advocate to advance the interests of nature in habitat destruction cases.

The appointment of a “wildlife” advocate will help the court assess the true impact of environmental damage. Christopher Stone advanced this argument in his seminal law review article, *Should Trees have Standing*.<sup>32</sup> Stone noted that courts frequently fail to consider the injury that natural objects suffer in environmental lawsuits. Instead the court simply weighs the economic interest of the polluting party against another's interest in enjoyment of their private property. As a result, significant environmental harms have been ignored.<sup>33</sup> A wildlife advocate will allow the court to consider the economic and social costs to wildlife of the defendant's conduct as Desmond's Law allows the court to consider the harm to the animal.

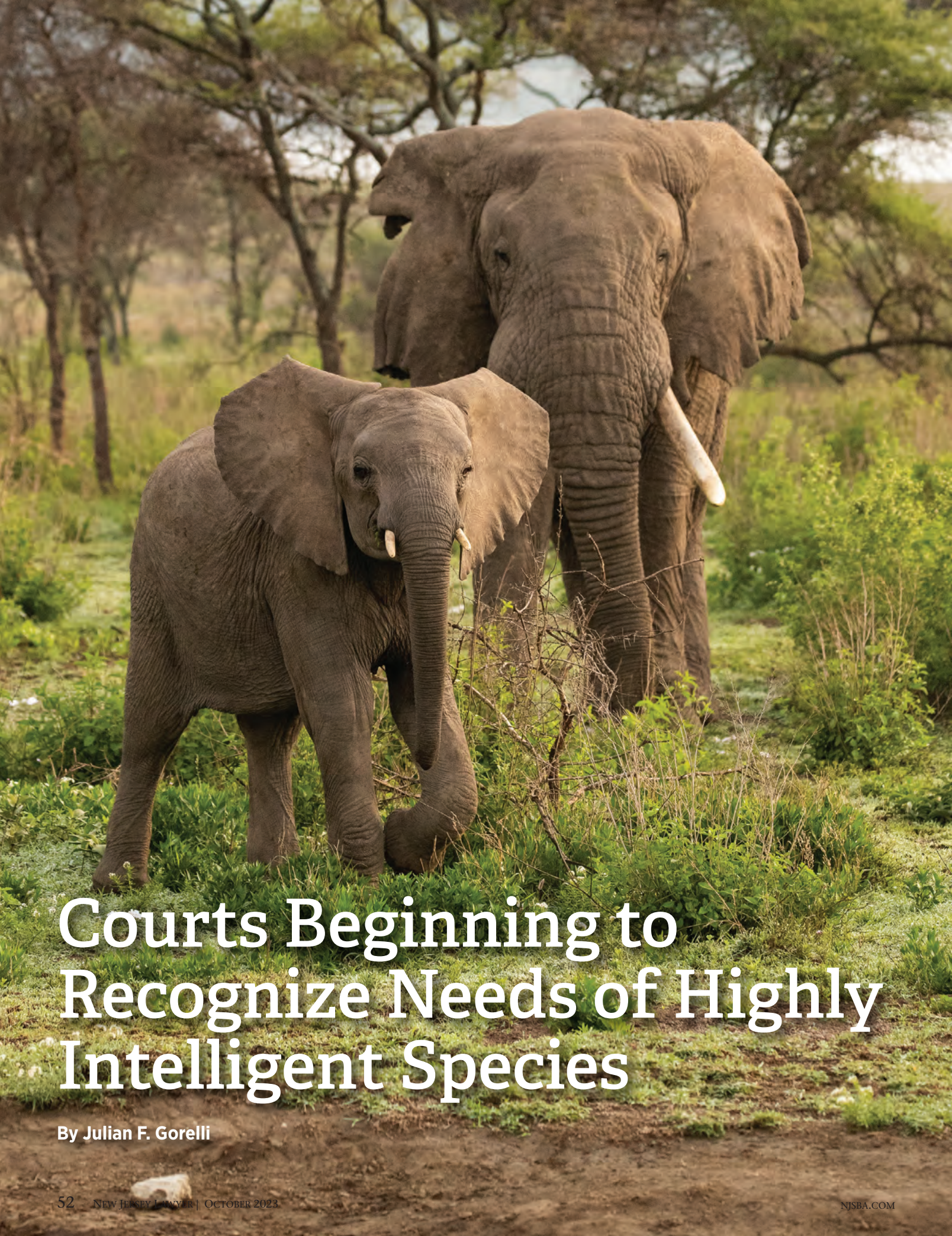
#### **Conclusion**

The possible solutions proposed in this article are just the beginning of the analysis. One article cannot fully cover all the relevant bodies of law, including the environment, real property, corporations and trusts and estates. Rather, the authors call for experts in the cited fields to collaborate with each to find holistic approaches. We also encourage attorneys in other states to see which of the proposed solutions may be best applied in their state. For example, lawyers in states with large indigenous communities may try to advance rights of nature arguments. Attorneys in states with *ad litem* models may argue for extension to a nature advocate. ■

## Endnotes

1. See [wwf.org.uk/learn/wildlife/endangered-animals](http://wwf.org.uk/learn/wildlife/endangered-animals).
2. Mass extinction refers to the loss of about three quarters of all species on the planet over a short period of geological time. See [earth.org/what-and-when-were-the-mass-extinction-events/](http://earth.org/what-and-when-were-the-mass-extinction-events/) for a historic description of the five previous mass extinctions.
3. IPBES, Nature's Dangerous Decline "Unprecedented", Species Extinction Rates "Accelerating," [ipbes.net/news/Media-Release-Global-Assessment](http://ipbes.net/news/Media-Release-Global-Assessment)
4. E.O. Wilson, *The Creation: An Appeal to Save Life on Earth* (2006) at page 75.
5. Under N.J.S.A. 3B:31-24a, a trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal, or if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.
6. Under N.J.S.A. 3B:31-24b, a pet trust may be enforced by the settlor or by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.
7. In 2008, Ecuador became the first nation to guarantee the rights of the environment in its national constitution. It established both the rights of nature itself as well as the rights of humans to benefit from a healthy environment. CONSTITUCION DEL ECUADOR ch. 7, arts. 71-74.
8. In 2017, the New Zealand Parliament passed the Te Awa Tupua Act which recognized the Whanganui River as a legal person. See Jeremy Lurgio, *Saving the Whanganui: Can Personhood Rescue a River?* THE GUARDIAN (Nov. 29, 2019, 14:00 EST), [theguardian.com/world/2019/nov/30/saving-the-whanganui-can-personhood-rescue-a-river](http://theguardian.com/world/2019/nov/30/saving-the-whanganui-can-personhood-rescue-a-river)
9. 441 F. Supp. 3d. 551 (N.D. Ohio Feb. 27, 2020).
10. 441 F. Supp. at 553.
11. 441 F. Supp. at 554.
12. 441 F. Supp. at 555.
13. 441 F. Supp. at 557.
14. Id.
15. Gwendolyn Gordon, *Environmental Personhood*, 43 Columbia Journal of Environmental Law 43, 49-91 (2018).
16. See Anna Scartz, *Do You Need Legs to Stand? Wild Rice Stands in Trial and an Examination of the Use of Legal Personhood to Protect the Rights of Nature in Court*, 51 GA. J. INT'L & COMPAR. L. 245 (2022) at page 254 ("For example, in many Native American belief traditions, the land is an actual, living being.")
17. Id. at 256.
18. Id. at 261.
19. [centerforenvironmentalrights.org/news/press-release-sauk-suiattle-tribe-vs-seattle-sees-the-rights-of-salmon-protected-in-new-tribal-court-case?rq=salmon](http://centerforenvironmentalrights.org/news/press-release-sauk-suiattle-tribe-vs-seattle-sees-the-rights-of-salmon-protected-in-new-tribal-court-case?rq=salmon)
20. Id.
21. NJSA 14A: 18-5.
22. NJSA 14A: 6-1 (2)
23. Research has established that just a hundred companies are responsible for 71% of the world's carbon emissions. Paul Griffin, CDP Carbon Major Report 2017, CDP, July 2017, cited in *The Disenchanted Earth*, Seymour (Indigo Press 2022) at page 15.
24. See, e.g. NJSA 14A:5-30 (2) (unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts of the corporation, except that a shareholder may become personally liable by the reason of his own acts or conduct)
25. See e.g., Professor Pistor's most recent book, *The Code of Capital: How the Law Creates Wealth and Inequality* (2022).
26. Transcript, Ezra Klein at [nytimes.com/2023/01/13/opinion/e-zra-klein-podcast-katharina-pistor.html](http://nytimes.com/2023/01/13/opinion/e-zra-klein-podcast-katharina-pistor.html)
27. State, Dept. of Environ. Prot., 94 N.J. 473 at 500. (1983).
28. 94 N.J. 473 at 500-01.
29. Eoin Jackson, *The Case for Eco-Liability: Post Okpabi Justifications for the Imposition of Liability on Parent Companies for Damage caused to the Environment by their Subsidiaries*, 7 The London School of Economic Law Review 61, (2021).
30. CONN. GEN. STAT. § 54-86n (2019)
31. The Courtroom Animal Advocate Program bill would empower law students and volunteer lawyers to advocate for animal victims in cruelty criminal cases. A1965(Mukherji)/S2211(Stack) provides for an advocate in criminal cases concerning the welfare or care of an animal.
32. 45 So. California Law Review 450-51 (1972).
33. See Stone, cited above, at pages 474-75.





# Courts Beginning to Recognize Needs of Highly Intelligent Species

By Julian F. Gorelli



In recent years, society has deepened its understanding of the immense cognitive and emotional capabilities of certain animals<sup>1</sup> such as elephants, chimpanzees, and other highly intelligent species. We have become more sensitive to their need for autonomy and capacity for suffering, both physical and emotional, and more appreciative of their need for expansive, wild spaces to live, forage, and develop the complex social structures needed to thrive and flourish.

Scientists, as well as the general public, who are studying animals such as chimpanzees and elephants now increasingly recognize that solitary, or near solitary, confinement in a small, confined area for public display, entertainment or education is antithetical to the mental and emotional well-being of such highly intelligent animals. These conditions violate no state or federal anti-cruelty or animal protection law.

Where there is no violation of law, there is no remedy for a captive chimpanzee or elephant. And even where a state or federal anti-cruelty or animal

protection law has been violated, already over-stretched law enforcement agencies do not always have the resources to act. Neither do associations or other organizations devoted to the protection of such an animal, unless themselves “adversely

affected,” have standing to intervene or file suit directly on an animal’s behalf.<sup>2</sup>

protection, and ships can sue in their own names for damages, neither enjoys the right to vote or countless other rights available to natural persons.

Regarding the second threshold question, as Benjamin Cardozo observed, the

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common law—judge-made law—is designed to change with the times:

If neither public law enforcement, nor private organization, can step in, what remedy might a captive wild animal have? There are at least two threshold questions: (1) if animals are mere property,<sup>3</sup> how can property have standing to appear in court?; and (2) even if animals had standing to sue, what basis could an animal rely upon to demand release from captivity where no law is violated?

Regarding the first threshold question, no one should be surprised that in our legal system different forms of property have long been recognized as “legal persons”—not to be confused with “natural persons”—with standing to “appear” in court on their own behalf. We need look no further than corporations or ships for examples.<sup>4</sup> Of course, recognition that property such as a corporation or ship has standing as a legal person does not bestow on either the full panoply of rights enjoyed by a human. For example, while corporations enjoy First Amendment pro-

tection, and ships can sue in their own names for damages, neither enjoys the right to vote or countless other rights available to natural persons.

If judges have wo[e]fully misinterpreted the *mores* of their day, or if the *mores* of their day are no longer those of ours, they ought not to tie, in helpless submission, the hands of their successors.<sup>5</sup>

In an effort to address both threshold questions, the Nonhuman Rights Project (NhRP) has advanced an argument based on the common law writ of habeas corpus.<sup>6</sup> While historically used only for human beings, the NhRP argues, the writ of habeas corpus lives in our common law, which courts can and should revise to keep up with society’s evolving sense of morality and increased scientific knowledge, such as we now have regarding the complex cognitive and emotional capabilities of animals like elephants, chimpanzees and other species.

Armed with affidavits from leading scientists attesting to the astonishing cognitive and emotional capabilities and



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complexities of chimpanzees and elephants, and supported by *amici* briefs from leading legal scholars, including Harvard's esteemed Laurence H. Tribe, the NhRP has begun making its case. The NhRP filed its first legal challenges on behalf of several captive chimpanzees and a captive elephant in the New York courts and has since expanded its efforts to other states.<sup>7</sup>

The NhRP's efforts in New York culminated in a decision by that state's highest court denying relief on the grounds, among others, that *habeas corpus* is limited to humans, and does not extend to animals. In addition to concerns over a slippery slope, the primary basis of the majority's opinion is twofold: first, elephants can have no rights because they have no duties. Second, even if otherwise applicable, *habeas corpus* could only be used to open the gates of the zoo and release her to freedom (and to certain death), but could not be used to transfer her to an elephant sanctuary where Happy could live out her life, free to roam large natural expanses in the company of other elephants, as she would have in the wild.<sup>8</sup>

In a forceful dissent joined in part by Judge Jenny Rivera, Judge Rowan D. Wilson argued that the primary basis of the majority's decision was in error. First, many humans incapable of holding duties, such as young children, infants and incompetent adults, nevertheless have rights. Second, *habeas corpus* has historically been used to move those petitioners who cannot simply be released without supervision or assistance, to a place where they can be given as much freedom as possible while being cared for according to their needs and capabilities. Both were arguments pressed by Tribe in his *amicus* brief.<sup>9</sup>

Along with Judge Wilson, Judge Rivera, who issued her own thoughtful dissenting opinion, assuaged the majori-

ty's concerns that granting Happy relief would open the floodgates. It was noted, for example, that a recognition of legal personhood is not inconsistent with property ownership. Corporations and ships, both owned, both property, and both considered legal persons, provide two ready examples. The dissent also pointed to a clear distinction between domesticated animals and pets, on the one hand, and wild animals such as Happy on the other, noting that a ruling in favor of the latter would not apply to the former.<sup>10</sup>

Referring to the unrebutted scientific evidence, Judge Wilson reiterated how greatly elephants suffer when, as Happy, confined for years, or even decades, often alone, enclosed in small spaces.<sup>11</sup> Quoting from a former colleague on the Court of Appeals, Judge Wilson phrased the question now facing our society, as follows:

"Does an intelligent nonhuman animal [in that case a chimpanzee] who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her?"<sup>12</sup>

Judge Wilson argued that *habeas corpus* should evolve with our growing appreciation and understanding of an elephant's extraordinary cognitive and emotional capabilities, and complex social needs. He concluded that *habeas corpus* should provide an avenue for Happy's transfer from her small, solitary enclosure, where she is held for display, to an expansive elephant sanctuary, which agreed to take her for free, where she can thrive and roam freely among other elephants in an environment designed to address her basic needs as a highly complex and intelligent social being.<sup>13</sup>

Based on scientists' growing understanding of the cognitive capabilities of elephants and other animals, as well as

their capacity for suffering, the case for legal personhood for animals has been litigated, and in some cases recognized, in other legal systems across the world.

Pakistan's Islamabad High Court has recognized the right of animals "to live in an environment that meets [their] behavioral, social and physiological needs."<sup>14</sup> Based on that finding, the High Court issued a writ of mandamus ordering the transfer of Kavaan, a captive elephant, from a zoo unable to provide such an environment, to a sanctuary that could.<sup>15</sup> The court explained:

By now there is consensus that an Elephant has emotions and some are similar to those of a human. There also appears to be compelling evidence that zoo is not an appropriate place for this species and zoo's across the globe are considering to phase them out. They feel pain, distress, happiness as well as sadness. The birth of a baby elephant is celebrated while they cry and mourn the death of a member of the herd. Nature has created elephants to live, survive and thrive in a particular habitat. The destruction of its natural habitat at the hands of the humans has brought this amazing species to a brink of extinction. The needs of this innocent creation cannot be met in the captive environment of a zoo.<sup>16</sup>

The preceding year, India's High Court had gone even further. In a scholarly opinion—drawing heavily from history, philosophy, science, religion, international law, sister legal systems, and of course India's own statutory and constitutional law—the court declared that animals are not mere things, but are legal entities or "persona", capable of having rights under the law, e.g. maximum loads for work animals, enforceable by a court appointed guardian and legal representative.<sup>17</sup>

While U.S. courts have yet to go as far

as the courts in Pakistan or India, the esteemed Judge Benjamin Cardozo saw his role as judge in this way:

My duty as judge may be to objectify in law, not my own aspirations and convictions and philosophies, but the aspirations and convictions and philosophies of the men and women of my time. Hardly shall I do this well if my own sympathies and beliefs and passionate devotions are with a time that is past.<sup>18</sup>

In conclusion, it seems that a growing number of jurists, both here and abroad, reflect the convictions and philosophies of a growing number of people of our time, that certain highly intelligent and socially complex wild animals, with whom we share this earth, warrant the right to freedom from captivity and display. Perhaps that would be only a first step. ■

## Endnotes

1. While humans are of course animals, as used in this article, “animal” refers only to nonhuman animals.
2. *Sierra Club v. Morton*, 405 U.S. 727, 740-741 (1972).
3. Reasoning that dogs are property, our State Supreme Court determined that the “rescue doctrine” was inapplicable because it is available only to save or shield human life. *Samolyk v. Berthe*, 251 N.J. 73, 113-114 (2022). In so ruling, the Court declined to expand the rescue doctrine to property, except where property is saved to save life. The Court did not in that case address whether the common law could or should be expanded to recognize a dog as something more than mere property in the eyes of the law. In a prior decision, although it recognized “pets to be unlike property in the traditional sense,” the Court declined to allow recovery “for emotional distress caused by observing the traumatic death of [one’s pet].” *McDougall v. Lamm*, 211 N.J. 203, 314, 327 (2012).
4. *Sierra Club v. Morton*, *supra* at 742-743, n. 2,3 (Douglas, J. dissenting) (noting that corporations and ships have both been allowed to participate as parties in litigation.)
5. Benjamin N. Cardozo, *The Nature of the Judicial Process* (Yale University Press; 1921), p. 152.
6. See [nonhumanrights.org/?gclid=CjwKCAjwvdajBhBEEiwAeMh1UAQCPdC1ssDIXRqW1vkdf5LKqvkgypEtw7KVKTLAqzGe3-uo4bU4hoCbIUQAvD\\_BwE](https://nonhumanrights.org/?gclid=CjwKCAjwvdajBhBEEiwAeMh1UAQCPdC1ssDIXRqW1vkdf5LKqvkgypEtw7KVKTLAqzGe3-uo4bU4hoCbIUQAvD_BwE), last viewed May 30, 2023.
7. The NhRP recently filed its first case in California, where it remains pending. [nonhumanrights.org/blog/new-client-mabu/](https://nonhumanrights.org/blog/new-client-mabu/), last viewed May 31, 2023. Its cases previously filed in Connecticut were unsuccessful.
8. *In the Matter of Nonhuman Rights Project, Inc., on Behalf of Happy v. Breheny*, 38 N.Y.3d 572 (N.Y. Ct. App. 2022). Having been captured as a baby, and kept in captivity for decades, Happy would be unable to survive in the wild.
9. *Happy v. Breheny*, *supra*, 38 N.Y.3d at 580-602, 640-642 (Wilson and Rivera, J.J. dissenting).
10. *Ibid.*
11. *Id.* at 619.
12. *Happy v. Breheny*, *supra*, 38 N.Y.3d at 626 (Wilson J., dissenting) (quoting from Judge Fahey, ret., in his concurring opinion in *In the Matter of Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery, et al.*, 31 N.Y.3d 1054, 1058 (N.Y. Ct. of App. 2018).
13. As Judge Wilson noted, the trial court’s finding, undisturbed on appeal, is that: “Happy is an extraordinary animal with complex cognitive abilities, an intelligent being with advanced analytic abilities akin to human beings.” *Id.* at 618.
14. *Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad*, Islamabad High Court, W.P. No. 1155/2019, approved for reporting, decided May 21, 2020, p. 60. Similar litigation in Argentina and Columbia met with mixed results. The fascinating and groundbreaking case of the Columbian hippos is discussed in a separate article included in this issue of the *New Jersey Lawyer*.
15. *Id.* at 61.
16. *Id.* at 12-13.
17. *Karnail Singh and others v. State of Haryana*, High Court of Punjab & Haryana at Chandigarh, CRR-533-2013, decided May 31, 2019, pp. 93, 98, 104.
18. Cardozo, *supra* at 173.







# ‘Cocaine Hippos’ and the Quest for Legal Personhood

By Thomas A. Leach and Doris Lin

In October 2021, the animal law community saw an uptick in discussions related to legal personhood due to the Animal Legal Defense Fund press release—“Animals Recognized as Legal Persons for the First Time in U.S. Court.”<sup>1</sup> Many attorneys and advocacy groups have long sought such a legal precedent, and this recognition is a watershed moment in the animal rights movement. Multiple news organizations picked up the press release and announced the ruling with much fanfare—AP News,<sup>2</sup> *The Washington Post*,<sup>3</sup> and *The Hill*<sup>4</sup> included. However, what happened is more complicated than the headlines make it seem, so a look beyond the headlines and a bit of background about the case is helpful.

## Background: ‘Cocaine Hippos’

The case, *Community of Hippopotamuses Living in the Magdalena River v. Ministerio de Ambiente y Desarrollo Ss*, Docket No. 1:21-mc-00023-TSB-KLL (S.D. Ohio), is about a colony of hippos living in Colombia. These, however, are not ordi-

nary hippos you would come across in the wild. These are hippos descended from four hippos owned by Pablo Escobar, the notorious drug trafficker and “King of Cocaine.” Colloquially, the herd is known as the “Cocaine Hippos.” It seems Escobar had an affection for hippos and kept four on his estate, dubbed Hacienda Nápoles, along with elephants, zebras, and giraffes, among others.<sup>5</sup>

After Escobar was killed by Colombian police in 1983, most of the animals were removed. But the hippos were deemed too difficult to move and were left on site. Over the years, the growing hippo population escaped the grounds and settled in the nearby Magdalena River where they threatened nearby farmers, crops, and other wildlife.

## Colombian Litigation and the Animal Legal Defense Fund Application

Some local officials sought to euthanize the animals to halt the damage and threats to the local population, so a Colombian attorney filed a lawsuit in that country seeking to prevent



ALDF's own arguments recognized that the Hippos were not persons under United States law. Instead, ALDF argued that if the Hippos were litigants in Colombia, they must be viewed by the U.S. Court as "interested persons" under section 1782(a) "even if they would not be recognized as persons in our domestic legal system for other purposes...."

local officials from euthanizing the hippos. Under Colombian law, the litigation was filed in the name of the animals: "Community of Hippopotamuses Living in the Magdalena River" (the "Hippos"). The Colombian attorneys found experts residing in the United States specializing in non-lethal methods of controlling hippo populations. The Animal Legal Defense Fund (ALDF) assisted the Colombian attorneys in seeking an order in the U.S. District Court for the Southern District of Ohio under 28 U.S.C. §1782(a)—Assistance to foreign and international tribunals and to litigants before such tribunals—to provide for the taking of testimony from the two experts.

In relevant part, §1782(a) provides that the "district court of the district in which a person resides or is found may order him to give his testimony or state-

ment or to produce a document or other thing for use in a proceeding in a foreign or international tribunal...The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given...<sup>6</sup> The "interested person" in this case were the Hippos in Colombia—the named litigants in the Colombian case pursuant to Colombian law. The *ex parte* proceeding was quickly decided and granted via the signed order prepared by ALDF attorneys.

The logic applied by ALDF in announcing that the Hippos were declared legal persons is that §1782(a) applies to "interested persons." And, because the court ordered the testimony upon the application of the "interested

person"—the Hippos under Colombian law—the Court recognized the animals as a legal person. Certainly, this is a confusing twist to the lay person. But, in peeling back the headlines, we see that ALDF's own arguments in the case recognize that they were not seeking an order to declare animals as legal persons. ALDF's own arguments recognized that the Hippos were not persons under United States law. Instead, ALDF argued that if the Hippos were litigants in Colombia, they must be viewed by the U.S. Court as "interested persons" under section 1782(a) "even if they would not be recognized as persons in our domestic legal system for other purposes...."<sup>7</sup>

Because §1782 is about comity and assisting foreign tribunals, U.S. courts do not question whether a party has standing in another country for the purpose of a §1782 application. In its papers, ALDF quoted *In re Furstenberg Fin.*:<sup>8</sup> "[A] determination of Applicants' standing in a [foreign] suit reaches further into the underlying merits of their claims than [U.S. courts are] required to contemplate under Section 1782, and the merits of their claims are not to be heard and decided before [U.S. courts]."

Magistrate Judge Karen L. Litkovitz's one-page order grants the Hippos' application, without explanation.

This was an uncontested order to assist with litigation taking place in a foreign jurisdiction, a common occurrence in our federal District Courts. To be very



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clear, there was no review or discussion by the court about the legal status of animals in the United States.

## **New Jersey and Personhood for Animals**

More important for New Jersey practitioners, a recent opinion from the New Jersey Supreme Court reinforces that animals, even our pets, are property under New Jersey law. On June 13, 2022, the Court held “[a]fter reviewing the noble principles that infuse the public policy underpinning this cause of action, the Court declines to consider property, in whatever form, to be equally entitled to the unique value and protection bestowed on a human life.”<sup>9</sup>

In its decision, the Court wrote,

We decline to expand the rescue doctrine to include injuries sustained to protect property, except in settings in which the plaintiff has acted to shield human life. We are convinced that any attempt to reform the application of the rescue doctrine to include the protection of property, whether animate or inanimate, realty or chattel, must emanate from our innate instinct to protect human life. Notwithstanding the strong emotional attachment people may have to dogs, cats, and other domesticated animals, or the great significance some may attribute to family heirlooms, or works of art generally considered as irreplaceable parts of our cultural history, sound public policy cannot sanction expanding the rescue doctrine to imbue property with the same status and dignity uniquely conferred upon a human life.<sup>10</sup>

While animals in New Jersey, or anywhere in the U.S., do not have legal personhood, they are more than property and are protected by laws that don’t apply to tables or lamps: inflicting “unnecessary cruelty” to animals is pro-

hibited;<sup>11</sup> custody agreements for animals are enforceable by our courts;<sup>12</sup> and a trust can be created for the care of your animals after you are gone.<sup>13</sup>

## **Animals as Plaintiffs and Legal Persons in Other Jurisdictions**

A group that is working to secure legal rights for animals, the Nonhuman Rights Project, has not yet achieved legal personhood for animals, but has made advancements in the field. For example, *People ex rel. Nonhuman Rights Project, Inc. v. Lavery* held that a chimpanzee is not a person entitled to the rights and protections afforded by a writ of habeas corpus,<sup>14</sup> but a concurring opinion from Judge Fahey of the New York Court of Appeals states, “The better approach in my view is to ask not whether a chimpanzee fits the definition of a person or whether a chimpanzee has the same rights and duties as a human being, but instead whether he or she has the right to liberty protected by habeas corpus ... While it may be arguable that a chimpanzee is not a “person,” there is no doubt that it is not merely a thing.”<sup>15</sup>

In a 2022 case that was also filed by the Nonhuman Rights Project, the New York Court of Appeals decided that Happy, dubbed by *The New York Times* as “The Bronx Zoo’s Loneliest Elephant,”<sup>16</sup> was not a person under the law pursuant to litigation filed seeking a writ of habeas corpus. In that case, the Court wrote “Nonhuman animals are not, and never have been, considered ‘persons’ with a right to liberty ....” The Court also noted that “[g]ranting legal personhood to a nonhuman animal in such a manner would have significant implications for the interactions of humans and animals in all facets of life, including risking the disruption of property rights, the agricultural industry (among others), and medical research efforts. Indeed, followed to its logical conclusion, such a

determination would call into question the very premises underlying pet ownership, the use of service animals, and the enlistment of animals in other forms of work.”<sup>17</sup> However, Judge Wilson’s dissent argued that whether Happy was a person is “irrelevant” and that the contention that only humans can have rights is “unsupportable.”<sup>18</sup> Judge Rivera also dissented: “I conclude that history, logic, justice, and our humanity must lead us to recognize that if humans without full rights and responsibilities under the law may invoke the writ to challenge an unjust denial of freedom, so too may any other autonomous being, regardless of species. Such an autonomous animal has a right to live free of an involuntary captivity imposed by humans, that serves no purpose other than to degrade life.”<sup>19</sup>

No court in the United States has explicitly granted any animal legal personhood status. However, several cases have featured animals as plaintiffs.<sup>20</sup> See, for example, *Naruto v. Slater*, in the U.S. District Court for the Northern District of California, a case brought by People for the Ethical Treatment of Animals seeking to have a macaque bring a claim under federal copyright law.<sup>21</sup> The court found that even though the animal had Article III standing, he lacked statutory standing to sue under the Copyright Act.

As noted in *Hawaiian Crow (Alala) v. Lujan*,<sup>22</sup> several cases have named animal species as plaintiffs in Endangered Species Act litigation: *Mt. Graham Red Squirrel v. Yeutter*,<sup>23</sup> *Palila v. Hawaii Dept. of Land & Natural Resources*,<sup>24</sup> *Northern Spotted Owl v. Hodel*,<sup>25</sup> and *Northern Spotted Owl v. Lujan*.<sup>26</sup> However, the animals were never the sole plaintiff and defendants never challenged whether an animal species could be a plaintiff in these four cases. This led to the language in *Palila* that stated that an endangered species can be a plaintiff being called “dictum” in *Hawaiian Crow*.<sup>27</sup> The *Hawaiian Crow*



court granted defendants' motion to strike the 'Alala bird as a plaintiff.

## Summary

Because Colombia recognizes that hippos can be plaintiffs, ALDF found themselves filing a motion in Ohio on behalf of hippos on another continent. As of June 2023, the Colombian hippo issue remains unresolved and Colombia's environment ministry is still considering various lethal and nonlethal hippo management options.<sup>28</sup>

Considering the line of cases featuring animals as plaintiffs and asking courts to recognize the legal personhood of non-humans, Community of Hippos has secured a place in animal law history. While the court did not explicitly hold that animals are legal persons, the court action is encouraging to those who would like to see legal personhood for nonhuman animals. Undoubtedly, we will continue to see personhood cases filed by animal rights attorneys throughout the country. ■

## Endnotes

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11. N.J.S.A.4:22-17
12. *Houseman v. Dare*, 966 A.2d 24, 405 N.J. Super. 538 (N.J. Super. 2009)
13. N.J.S.A. 3B:31-24
14. *People ex rel. Nonhuman Rights Project, Inc. v. Lavery* 24 A.D.3d 148 (N.Y. App. Div. 2014). "Needless to say, unlike human beings, chimpanzees cannot bear any legal duties, submit to societal responsibilities or be held legally accountable for their actions. In our view, it is this incapability to bear any legal responsibilities and societal duties that renders it inappropriate to confer upon chimpanzees the legal rights—such as the fundamental right to liberty protected by the writ of habeas corpus—that have been afforded to human beings."
15. *Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 100 N.E.3d 846, 848 (2018) (Fahey, J. concurring)
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18. *Id.*
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22. *Hawaiian Crow (Alala) v. Lujan*, 906 F. Supp. 549 (D. Haw. 1991)
23. *Mt. Graham Red Squirrel v. Yeutter*, 930 F.2d 703 (9th Cir. 1991)
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1. Publication Title  New Jersey Lawyer		2. Publication Number <table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 10%; height: 20px;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td></tr><tr><td></td><td></td><td></td><td></td><td>380</td><td>680</td><td></td><td></td><td></td><td></td></tr></table>																380	680					3. Filing Date  9/15/23	
				380	680																				
4. Issue Frequency  Bi-monthly		5. Number of Issues Published Annually  6		6. Annual Subscription Price  \$60																					
7. Complete Mailing Address of Known Office of Publication (Not printer) (Street, city, county, state, and ZIP+4®) 1 Constitution Square New Brunswick, NJ 08901-1520				Contact Person Mindy Drexel  Telephone (Include area code) (732) 937-7518																					
8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer) 1 Constitution Square New Brunswick, NJ 08901-1520																									
9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Do not leave blank)																									
Publisher (Name and complete mailing address) Angela Scheck 1 Constitution Square New Brunswick, NJ 08901-1520																									
Editor (Name and complete mailing address) Mindy Drexel 1 Constitution Square New Brunswick, NJ 08901-1520																									
Managing Editor (Name and complete mailing address)																									
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Full Name			Complete Mailing Address																						
New Jersey State Bar Association			1 Constitution Square New Brunswick, NJ 08901-1520																						
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Full Name			Complete Mailing Address																						
12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) (Check one) The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes: <input type="checkbox"/> Has Not Changed During Preceding 12 Months <input type="checkbox"/> Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)																									



13. Publication Title New Jersey Lawyer			14. Issue Date for Circulation Data Below 8/1/23	
15. Extent and Nature of Circulation			Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)				
b. Paid Circulation (By Mail and Outside the Mail)	(1)	Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	13090	13090
	(2)	Mailed In-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)		0
	(3)	Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS®		
	(4)	Paid Distribution by Other Classes of Mail Through the USPS (e.g., First-Class Mail®)	30	30
c. Total Paid Distribution [Sum of 15b (1), (2), (3), and (4)]			14020	14020
d. Free or Nominal Rate Distribution (By Mail and Outside the Mail)	(1)	Free or Nominal Rate Outside-County Copies included on PS Form 3541		
	(2)	Free or Nominal Rate In-County Copies Included on PS Form 3541		
	(3)	Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g., First-Class Mail)	55	55
	(4)	Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)		
e. Total Free or Nominal Rate Distribution (Sum of 15d (1), (2), (3) and (4))			55	55
f. Total Distribution (Sum of 15c and 15e)			14075	
g. Copies not Distributed (See Instructions to Publishers #4 (page #3))			50	
h. Total (Sum of 15f and g)			50	0
i. Percent Paid (15c divided by 15f times 100)			99.6%	

\* If you are claiming electronic copies, go to line 16 on page 3. If you are not claiming electronic copies, skip to line 17 on page 3.



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a. Paid Electronic Copies	13090	13090
b. Total Paid Print Copies (Line 15c) + Paid Electronic Copies (Line 16a)	27980	27980
c. Total Print Distribution (Line 15f) + Paid Electronic Copies (Line 16a)	28085	27980
d. Percent Paid (Both Print & Electronic Copies) (16b divided by 16c × 100)	99.7%	100%

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17. Publication of Statement of Ownership

☒ If the publication is a general publication, publication of this statement is required. Will be printed

☐ Publication not required

in the 10/1/23 issue of this publication.

18. Signature and Title of Editor, Publisher, Business Manager, or Owner

*Ng SA*

Managing Editor

Date

9/15/23

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